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Date: Monday, 20 November 1995
To: CSEDALL
From: Mary Ann Wellbank
Subject: NEW POLICY ON RELEASING INFORMATION TO THIRD PARTIES

Effective immediately, the CSED will not release case information to parties calling on behalf of obligors or obligees unless the obligor or obligee has completed the newly developed Authorization for Release of Information (CS-100.1A). Previous authorizations/releases are invalid.

Concerns about confidentiality prompted this change in policy. In the past, obligors and obligees were allowed to specify the type of information to be released. As a result, a variety of special forms and circumstances exist and are not tracked on SEARCHS. With CSU answering phone calls, there is a need for a uniform document that can be recorded on SEARCHS and accessed by CSU.

The new form is an “all of nothing” release. The signing party cannot limit or specify the types of information to be released. Releases are on a case basis. If a party has more than one case, he/she must sign a release for each case he/she wants included in the release.

Both CSU and regional offices will be sending out the releases as they are requested. Signed and notarized authorizations must be returned to the appropriate regional office so be sure to put the regional office address in the heading of the form.

Upon receipt of a completed release, the caseworker will record the event in a SEARCHS casenote (including the name of the party signing the release and the name and relationship of the designee) and enter the same information on the CSU screen. This last step is very important.

To ease the transition, if you are aware of obligors or obligees who rely on third parties to deal with the CSED, please take the initiative and send them an Authorization for Release of Information.

The forms person in each office is being sent a master copy of the new form. It can be photocopied until supplies are distributed in approximately two weeks.

Manual pages will be out in the coming months. Meanwhile, place a copy of this e-mail in your CSED manual at Section CS 100 and note its addition in the table of contents.

Events are located on the Intake/Mail/Telephone menu.

SUPERSEDES

[new section]

REFERENCES

42 USC §§ 653(a)-(c), 654(26), 663(a)-(d); 45 CFR 303.70; MCA 40-5-206(6)

POLICY

Identifying Victims of Domestic Violence. To prevent the occurrence or reoccurrence of domestic violence or child abuse in child support cases, the CSED identifies participants whose whereabouts should not be disclosed, and enters a special "flag" for these participants on SEARCHS. The determination about whether a participant's information should be protected is based on the requirements of MCA 40-5-206(6), which states:

"The [CSED] may not disclose information regarding the whereabouts of a party to another party if:
(a) the [CSED] received notice that a protective order with respect to the party has been entered against the other party; or
(b) the [CSED] has reason to believe that the release of information may result in physical or emotional harm to the party."

System Designations. The SEARCHS flag is known as the "alleged domestic violence indicator" (DVI). The caseworker sets the DVI on the alleged victim--either the obligee or the obligor/alleged father--in the case or subcase. SEARCHS then also attaches the DVI to any child in the subcase who resides with the alleged victim.

Note that the DVI is not related to the SEARCHS "possibly dangerous" indicator. The possibly dangerous indicator is used to identify a participant who may pose a physical threat to the CSED; it is **not** used to identify the perpetrator in a domestic violence case. The alleged domestic violence indicator is entered on the SEARCHS CAP screen, and is displayed on CAS and CSU at the field marked V (violence); the possibly dangerous indicator is entered on the SEARCHS PAR screen, and is displayed on CAS and CSU at the field marked D (dangerous).

Central Case Registry/Federal Case Registry. In SEARCHS Region 90 cases (non-IV-D cases maintained in the central case registry--see section CS 200.3), where applicable the clerk of court enters a DVI for the victim named in a protective or restraining order before transmitting the case data to SEARCHS.

When Montana submits SEARCHS IV-D and Region 90 case information to the Federal Case Registry, the data include any DVIs entered by the CSED or the clerk of court for the participants. The Federal Case Registry then uses a "family violence indicator" to flag participants identified by Montana or other states as alleged victims.

Expanded FPLS and the Judicial Override. Beginning in 1996 federal law expanded the Federal Parent Locator Service (FPLS) data base to include the Federal Case Registry, and allowed authorized persons to access the FPLS for purposes of determining or enforcing custody and visitation. These two changes created a potential conflict between equally legal purposes. For example, what is the proper outcome when a state parent locator service submits a locate request to the FPLS for the purpose of visitation enforcement, and the person to be located is protected by another state's family violence indicator in the Federal Case Registry?

Federal law provides a method for resolving conflicts between the family violence indicator and FPLS access. The method involves the courts of the state requesting the locate services, and is called the judicial override process.

Proactive Matches Not Reported. It is important to note that, with respect to a person protected by a family violence indicator, federal proactive matching operates differently from a direct request submitted by a state parent locator service. If a protected person is discovered by proactive matching within the Federal Case Registry to be a participant in another state's case, the FPLS does not inform the other state that there has been a match. In these situations the other state receives no information at all--just as if there had been no match. If, however, a state parent locator service submits a direct request to the FPLS for information on the protected person, the state will receive a response indicating there is a match but disclosure is prohibited based on the family violence indicator. Therefore, the judicial override process referenced above is useful only after a direct request to the FPLS reveals that information on the protected person does exist.

Organization. The remainder of this section is divided into three parts:

I. SETTING THE DOMESTIC VIOLENCE INDICATOR
II. JUDICIAL OVERRIDE INITIATED BY MONTANA
III. JUDICIAL OVERRIDE INITIATED BY ANOTHER STATE.

PROCEDURES

I. SETTING THE DOMESTIC VIOLENCE INDICATOR

Caseworker

1. Upon becoming aware of the existence of any of the conditions in (1) through (6) below, immediately sets the SEARCHS alleged domestic violence indicator (DVI) for the alleged victim in the appropriate subcase or case. Enters extended text on SEARCHS describing the basis for the DVI.

   (1) There is a protective or restraining order in place between the participants in a CSED case.

   (2) A participant in a CSED case both
       - requests the CSED not disclose information regarding the participant's whereabouts, and

- claims disclosure of the information may result in physical or emotional harm to the participant or the child.

Note that where this condition applies, no further evaluation of the claim by the caseworker, or proof of harm or risk of harm, is required.

The request may be oral or written; if it is oral, it must be received during a direct communication between the caseworker and the participant--a Customer Service Unit tickler alone is not sufficient.

(3) A good cause claim is pending for a CSED participant's public assistance referral.

(4) In a CSED public assistance case the IV-A agency has determined that domestic violence may interfere with the ability of the participant to work toward self-sufficiency. (This is referred to as the IV-A "time clock exemption" because the months during which the "interference" exists do not count toward the 24-month cash assistance limit.)

(5) In unusual cases, a participant has directly stated to the CSED that he or she intends physical harm to the other participant in the case. (Note that this condition does not apply to ordinary negative remarks, but only to direct threats. In questionable cases the caseworker should consult the supervisor.)

If this condition applies, the caseworker should also
- promptly inform the potential victim that the CSED has set a DVI in the case, and explain the reason for it, and
- complete the form in step 2 on behalf of the potential victim, and send him or her a copy.

(6) The CSED has received information from another Montana state agency indicating possible domestic violence against a participant in a CSED case by another participant in the case. (For example, the CSED liaison may receive such information from the FAIM Coordinator.)

2. If the DVI set in step 1 was based on an oral request from the alleged victim, prepares and sends to the alleged victim form CS-101.5A, Request for Non-Disclosure; upon receipt of the completed form, places the document in the case file and enters a SEARCHS case note. **Does not remove or delay setting the DVI in step 1 pending receipt of the completed form;** the oral request alone is a valid basis for setting and maintaining the DVI.

TERMINOLOGY: Beginning in step 3 below, "participant" means the person designated as the alleged victim in a DVI case.

3. If the facts in step 1 or 2 indicate the non-disclosure applies to all situations involving the participant (not to just this particular case or subcase), enters a SEARCHS case note to that effect, and sets a DVI in all other SEARCHS cases involving the

participant.

4. Monitors the case to ensure that information regarding the whereabouts of the participant is not disclosed by the CSED. Specifically proceeds in 4a through 4c below.

   a. Reviews any SEARCHS-generated documents that will be released to another participant in the case; in documents containing automated fields for the participant's telephone, address, or employer, confirms SEARCHS has suppressed the information. (Personal information should not appear when the DVI is set.)

   b. For **any** administrative or court hearing or trial in **any** CSED case involving the participant, inspects all CSED exhibits prior to their release to determine whether they contain the participant's telephone, address, or employer. If any exhibit contains this information, proceeds in 4b(i) and 4b(ii) below:

      i. Removes the information from all copies exchanged with the parties, and from any copies sent to CSED witnesses in conjunction with their testimony; leaves the original exhibit intact.

      ii. Before sending the original exhibit to the Office of the Administrative Law Judge (OALJ) or court, attaches a clear and unmistakable warning that the document cannot be released because of a risk of harm to the participant or child. Does not in any way alter the original document. At the option of the caseworker, includes an additional copy of the exhibits with the non-disclosable information removed or obliterated, for the use of the OALJ or court.

   NOTE: Global Application of DVI for Hearings. Because information presented at child support hearings or trials is public record, it can be obtained by anyone, including an alleged perpetrator of domestic violence against the participant in another case. For this reason CSED policy extends the non-disclosure to all the participant's cases that go to hearing or trial.

   c. Identifies any other documents prepared or exchanged in the case that
      - contain information on the participant's whereabouts not suppressible by SEARCHS,* and that
      - will be sent to another participant in the case.

   *Information is not suppressible by SEARCHS if it is entered manually after the form is generated, or if it is needed by the main recipient of the form (for example, the employer or the licensing agency).

   Prevents disclosure of the participant's information to the other participant by proceeding in **either** 4c(i) **or** 4c(ii) below.

i. Removes the information from the copy sent to the other participant.

ii. Does not send a copy of the document to the other participant; instead, prepares and sends form CS-510.8B, Case Action Letter, briefly stating the action or status that would have been illustrated by the document itself.

Office of the Administrative Law Judge

5. Upon being informed by the caseworker that an exhibit submitted for a CSED hearing contains information that should not be released or disclosed because of a risk of harm to the participant, takes any steps necessary to protect the information before and during the hearing. After the hearing, places the protected document under seal and marks the sealed record as confidential.

   If a judicial review is requested, forwards the sealed, confidential record to the court along with the rest of the hearing record; informs the court the sealed record contains the whereabouts of an alleged victim of domestic violence and should not be disclosed.

Caseworker

6. Upon being contacted by the alleged victim in the DVI case stating the DVI is no longer necessary, prepares and sends form CS-101.5B, Withdrawal of Request for Non-Disclosure. Upon receipt of the completed and signed form or its equivalent, removes the DVI and enters a SEARCHS case note for the written request received.

7. Upon case closure, including closures where the case is being transferred to Region 90, does **not** remove the DVI except as authorized in step 6 above.

II. JUDICIAL OVERRIDE INITIATED BY MONTANA

The following definitions apply to the terms "authorized person" and "authorized purpose" as used in these PROCEDURES; for more complete definitions see the U.S. Code cites specified:

AUTHORIZED PERSON (CHILD SUPPORT) means (1) an agent or attorney with authority to seek to recover support under the IV-D State Plan; (2) a court with authority to issue an order for support against a noncustodial parent; (3) the custodial parent, legal guardian, attorney, or agent of a child not receiving public assistance; or (4) a state IV-B (child welfare services) or IV-E (foster care) agency. [42 USC 653(c)]

AUTHORIZED PURPOSE (CHILD SUPPORT) means establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations. [42 USC 653(a)(2)]

AUTHORIZED PERSON (CUSTODY, VISITATION, KIDNAPING) means (1) a state or federal agent or attorney with authority to enforce child custody or visitation; (2) a court with jurisdiction to make or enforce a child custody or visitation determination; or (3) a state or federal agent or attorney with authority to investigate, prosecute, or enforce laws against child kidnaping. [42 USC 663(d)(2)]

AUTHORIZED PURPOSE (CUSTODY, VISITATION, KIDNAPING) means making or enforcing child custody or visitation determinations, or enforcing child kidnaping laws. [42 USC 663(a)]

MT State Parent Locator Service (SPLS)

1. Upon receiving a locate-only request for parent locate services from an authorized person for an authorized purpose, determines whether the parent or custodian to be located (the subject) is a participant in a SEARCHS case.

   NOTE 1: Form of Request. A locate-only request for purposes of child support requires a signed application and contract; a locate-only request for purposes of custody, visitation, or enforcement of parental kidnaping laws requires a judicial request.

   NOTE 2: SEARCHS Case. A SEARCHS case means a CSED (IV-D) or Region 90 (non-IV-D) case maintained on SEARCHS.

   a. If the subject is a SEARCHS participant and **there is no DVI** attached to the participant for any case on SEARCHS, proceeds in 1a(i) or 1a(ii) below, and takes no further action in this section.
      i. Releases the information according to regular CSED procedures.
      ii. Explains that as an alternative to parent locate services the CSED can provide full child support enforcement services, and sends the applicant a CSED non-public assistance application. (Note that this option applies only if the applicant is a custodian who is seeking a noncustodial parent for purposes of child support enforcement.)

   b. If the subject is a SEARCHS participant and **there is a DVI** attached to the participant for any case on SEARCHS, proceeds to step 2 below; also proceeds if applicable in step 1a(ii) above.

      NOTE: Global Application of DVI for Locate-Only Requests. Because there is no existing SEARCHS case involving the applicant and the SEARCHS participant, and because the DVI normally protects a participant's information only within the case in which it is set, the DVI would be ineffective against an applicant for locate-only services. Therefore, CSED policy extends the non-disclosure to all locate requests received from outside applicants.

   c. If the subject is not a SEARCHS participant, attempts to locate the subject using automated interfaces and specific inquiries according to regular locate-only procedures.

- i. If the subject is located, releases the information according to regular procedures, and takes no further action in this section.
- ii. If the subject cannot be located, submits a locate request to the Federal Parent Locator Service (FPLS) according to the requirements at 45 CFR 303.70.
  - A. If the FPLS responds by disclosing available information, releases the information according to regular procedures, and takes no further action in this section.
  - B. If the FPLS notifies Montana that information cannot be disclosed because there is a family violence indicator attached to the subject in the federal case registry component of the FPLS, proceeds to step 2.

2. Informs the applicant that disclosure is prohibited and that the information can be disclosed only if a Montana district court determines disclosure would not be harmful to the subject or to the child (see NOTE 1 below).

If the applicant wishes to pursue a court determination, briefly explains the override process (see NOTE 2 below); generates and sends information sheet CS-101.5C, Judicial Override of Disclosure Prohibition; enters a SEARCHS case note for the information sheet sent to the applicant; and proceeds to step 7.

NOTE 1: Identifying the Proper Montana Court. If a Montana court has issued a separation, divorce, paternity, support, custody, or visitation order in a cause number involving the applicant and the subject, the issuing court is the proper court to make the disclosure determination. Otherwise, any Montana district court can make the determination if it accepts jurisdiction.

NOTE 2: Court Processing. The override process comprises the following actions involving the district court:
(1) The applicant petitions the district court for a determination regarding release of the information.
(2) If the court grants the petition, it sends the SPLS a written request for a one-time override of the non-disclosure restriction.
(3) If the request is in order, the SPLS obtains the applicable protected information and provides it to the court.
(4) The court reviews the information and makes a determination. If the determination is in favor of the applicant, the court releases some or all of the information to the applicant.

SEARCHS

3. In a CSED locate case, electronically submits a locate request to the FPLS at the time of case opening. Submits subsequent electronic requests whenever
   - the caseworker "forces" an FPLS request via the LOC screen, or
   - any key locate data element changes.

Regional Caseworker

4. Upon receiving a response to an FPLS request in step 3 stating disclosure is prohibited for reasons of family violence, determines whether a request for judicial override is appropriate. If so, contacts the Montana State Parent Locator Service (SPLS) at the CSED Locate Unit and requests initiation of a request for judicial override. (The SPLS will take over the process at this point. If and when the court finally determines that release of the information is appropriate, the SPLS will provide the locate information to the caseworker in step 12.)

   If a request for judicial override is not appropriate, takes no further action in this section.

SPLS

5. Upon being contacted by a regional caseworker seeking a request for judicial override in a CSED locate case, refers the case to the SPLS (Interstate) staff attorney.

SPLS Staff Attorney

6. Prepares and sends a petition to the appropriate Montana district court to initiate the override process for the release of the FPLS information.

SPLS

7. Upon receipt of a request from a Montana district court for override of the FPLS family violence indicator, enters a SEARCHS case note for the request received.

   a. If the request is based on a petition from the Montana SPLS in step 6, proceeds immediately to step 8.

   b. If the request is based on a petition from an applicant in step 1, works with the SPLS staff attorney to determine whether the request is made on behalf of an authorized person and for an authorized purpose (see the definitions at the beginning of this Part). If so,
      - for a request concerning a SEARCHS participant, proceeds to step 9;
      - for a request concerning a non-SEARCHS participant, proceeds to step 8.

      If not, with the guidance of the SPLS staff attorney informs the court the request cannot be processed, and explains why the applicant or purpose is not authorized or what documentation is lacking; takes no further action in this section until proper authorization or documentation is provided.

8. Prepares an override request package comprising
   - form CS-101.5D, Request for Override of Disclosure Prohibition (all fields must be fully completed pursuant to 45 CFR 303.70);
   - form CS-101.5E, Director's Attestation for Override Request;
   - a copy of the district court's request received in step 7; and
   - any additional documentation needed to allow the federal Office of Child Support Enforcement (OCSE) to verify the validity of the override request.

   Sends the package to OCSE via certified mail, return receipt requested. Enters a SEARCHS case note for the package sent, and proceeds to step 10.

   NOTE: OCSE/FPLS Processing. Upon receipt, OCSE will review the request for the necessary authorization and documentation. If the request is in order OCSE will obtain the protected information from the FPLS, identify the specific information appropriate to the request, and transmit the identified information to the SPLS in a secure package by a special delivery mechanism (for example, Federal Express) requiring a recipient signature. Appropriate information is defined according to the purpose of the request (see step 9 below). The information provided by OCSE will also include the name of the state that set the family violence indicator in the federal case registry (a component of FPLS). OCSE will notify the state that set the indicator that a Montana court has obtained an override of the indicator.

9. For an override request approved in step 7 concerning a SEARCHS participant, extracts the appropriate information from SEARCHS. Limits the printed extract to the following data, according to the purpose of the request:
   (1) For the purpose of child support--information about the parent's location, employment and wages (including eligibility for any group health coverage), and assets.
   (2) For the purpose of custody, visitation, or kidnaping enforcement--the parent or child's most recent address and place of employment.

SPLS/SPLS Staff Attorney

10. Upon receipt in step 8 or extraction in step 9 of the requested information, prepares form CS-101.5F, Information Resulting from Judicial Override. Attaches the protected information and sends the package by certified mail, return receipt requested, to the requesting district court; enters a SEARCHS case note for the protected information received (or extracted) and forwarded. Does not make or retain a copy of the protected information. Monitors for confirmation of service. Proceeds as applicable in 10a or 10b below.

    a. For information requested in a CSED locate case, does not enter the FPLS information on system or disclose it to the regional caseworker.

NOTE: Separation of SPLS from CSED Regional Processing. In cases where the SPLS submitted the override request on behalf of the CSED for the purpose of locating a CSED obligor, the protected FPLS information must remain protected until the court determines the information can be released to the CSED. In this situation the SPLS operates as a separate "arm" of the IV-D agency, and may not share information with the CSED (field services) arm.

b. For information extracted in step 9, if the DVI was set by the CSED, informs the regional caseworker (or Region 90 supervisor, if applicable) that a Montana district court has obtained an override. (The CSED regional staff may, at its option, take proactive steps to inform the CSED participant or provide information to the court, as described in Part III, step 2.)

If the case is a Region 90 case and the DVI was set by the clerk of court, takes no further action in this step (10).

11. Provides the following additional information to the court upon request:
    (1) If the subject is a non-SEARCHS participant, the contact address or telephone number for the state that set the indicator prohibiting disclosure.
    (2) If the subject is a SEARCHS participant, specific case information as available to assist the court in making an informed and meaningful determination.

12. For a determination requested in a CSED locate case, monitors for the decision of the court. Upon being informed the court will release the information, arranges for the secure delivery of the information to the regional office and alerts the caseworker.

Regional Caseworker

13. Upon receiving protected FPLS information from the court in a CSED locate case, loads the information on system, sets a DVI in all of the obligor's cases on SEARCHS, and enters a case note explaining how the information was obtained and why it is protected.

III. JUDICIAL OVERRIDE INITIATED BY ANOTHER STATE

MT State Parent Locator Service (SPLS)

1. Upon being notified by the federal Office of Child Support Enforcement (OCSE) that another state's court has obtained an override of a DVI placed by Montana, enters a SEARCHS case note documenting the override and identifying the state whose court will make the disclosure determination. If the DVI was set by the CSED, also informs the regional caseworker (or Region 90 supervisor, if applicable).

CSED Regional Staff/Region 90 Supervisor

2. (Optional) Upon notification by the SPLS in step 1, and according to the facts of the case and applicable regional policy, takes proactive steps as necessary to
   - notify the CSED participant of the pending determination and possible release,
   - provide information to the other state for the consideration of the court making the determination, or
   - in any other way promote a meaningful determination or appropriate protection.

   NOTE: Prior Notification, Contact with Placing State Not Required. Federal law does not require the court in an overriding state to notify the alleged victim prior to making the determination or prior to disclosing information on the alleged victim's whereabouts. Nor does the law require the court to contact the "placing" state for information about the alleged domestic violence. The contacts in this step are available at the region's option to address any gaps this situation may create.

3. Upon the request of the overriding court through the Montana SPLS, provides assistance in the decision-making process as needed. For example, provides further information concerning the circumstances of the DVI, or (in a CSED case only) facilitates the protected person's participation in a telephone hearing conducted by the overriding court.

July 5, 2004

BENEFITS BULLETIN

The table shown on the reverse lists some government and quasi-government benefits often received by obligors, and tells how the CSED must treat each type of benefit in determining (1) income included in Guidelines calculations, (2) income subject to withholding, and (3) case closure status. Please use the table as a "quick reference" guide for the specific benefit types listed. For benefit types not listed you may wish to consult your CSED staff attorney. Information contained in the table is considered CSED policy until revised or replaced.

BENEFITS TABLE

Last Updated 7/5/04

Obligor Benefit	Income for Guidelines?[1]	Subject to Income Withholding?[2]	Case Subject to Closure?
SSI (Supplemental Security Income--Title XVI)	No	No	Yes, if permanently and totally disabled; otherwise, see section CS 201.4 for enforcement
SSA (Old Age Retirement Income--Title II)	Yes	Yes	No
SSDI (Social Security Disability--Title II)	Yes	Yes	No
US military retirement	Yes	Yes	No
Veterans' disability	Yes	Maybe. If vet has waived a portion of retirement pay to receive disability, that portion of benefit is subject to withholding	No
Railroad retirement	Yes	No, unless there is a QDRO (Qualified Domestic Relations Order) that allows it	No
Railroad disability benefits	Yes	No	No
Railroad unemployment	Yes	Yes	No
Federal workers' compensation	Yes	Yes, but only that portion intended as wage replacement	No
MT workers' compensation	Yes	Yes	No
MT unemployment benefits	Yes	Yes	No
Temporary Assistance to Needy Families (TANF)	No	No	No--see section CS 201.4 for enforcement
Montana-Administered Retirement/Disability[3]	Yes	Yes	No
Federal work-study wages	Yes	No	No

[1] In general, if benefit eligibility is based on the person's **financial condition**, it is not included as income under the guidelines.

[2] In general, federal benefits based on **past employment** are subject to income withholding and/or garnishment for child support purposes.

[3] Persons receiving these benefits include state employees, judges, law enforcers, fire fighters, and teachers.

SUPERSEDES

CS 200.3, Central Case Registry, October 1, 1998

REFERENCES

MCA §§ 40-5-901, 906 through 910, and 921.

POLICY

Central Case Registry. The CSED maintains a central case registry (CCR) of all child support cases in the following categories:

(1) IV-D (CSED) cases
(2) Cases in which a support order is entered or modified by a Montana district court after October 1, 1998.

Cases with support orders entered or modified by a Montana tribal court after October 1, 1998, may also be included in the CCR at the option of the tribe.

(Note that the CCR, created in 1998, is different from, and should not be confused with, the CSED's central registry of incoming interstate cases, created in 1989 and maintained by the Interstate unit.)

Registration. The CSED establishes cases in the CCR by "registering" the following cases and support orders:

(1) IV-D cases
(2) Support or modification orders entered in Montana after October 1, 1998
(3) Orders or actions affecting a support order in (1) or (2) above.

To register a case the CSED must enter the data listed in the **case information** box on the following page. To register a support order the CSED must enter both the case information data and the data listed in the **order information** box.

Data Collection. The information required for registration of a court order in the CCR is created and transmitted to the CSED as follows:

1. The district court enters a support order or order affecting a support order.
2. The parties to the order complete a form designed by the CSED to capture the prescribed information; the parties submit the form to the clerk of court.
3. The clerk of court enters the information from the form in the Judicial Case Management System (JCMS).
4. The information is transmitted to SEARCHS via the SEARCHS-JCMS interface.
5. The clerk of court receives and enters in JCMS any updates provided by the parties.
6. (Optional) The tribal court submits a tribal support order to the CCR by mailing the completed form to the CSED for manual entry.

CASE INFORMATION FOR CENTRAL CASE REGISTRY

For each parent the name, sex, social security number, other identifying numbers, telephone number, and residential and mailing addresses.

For each child the name, date of birth, sex, social security number, if any, and residential address if different from that of the child's custodian.

For the obligee (if different from the child's parent) the person or entity's name and location.

For the obligor the name, address, and telephone number of the employer or other payor of income.

For each child covered by a health insurance plan the name of the carrier or plan, the policy identification number, names of persons covered, and other coverage information.

For each child not covered by a health insurance plan information as to the availability of coverage for the child through the obligor's and obligee's employers.

ORDER INFORMATION FOR CENTRAL CASE REGISTRY

Payments—amount of support payment for each child; amount of spousal support if applicable.

Dates—dates payment is due; inclusive dates of the support obligation.

Conditions—terms of any conditions that may affect payment amounts, due dates, or support obligation.

Arrears—subsequent judgments for arrears; amounts of any interest, late payment penalties, and fees included in the judgment.

Liens—support liens filed by the CSED against property of the obligor.

Health insurance coverage—terms of provisions for coverage.

Case location—name and county of the judicial district, or the name and address of the agency, where the record of the case is kept; the cause number or case identification number.

Central Case Registry Unit. When information on a court order is received by SEARCHS, the CSED Central Case Registry Unit (CCRU) resolves the information by either updating an existing CCR case, or opening a new CCR case. Non-IV-D cases in the CCR are assigned to Region 90. The CCRU also processes updates to parties' information received through JCMS in non-IV-D cases.

Payment Processing Unit. The CSED maintains a central payment processing unit for the following payments:

(1) Payments in IV-D cases
(2) Payments under immediate income withholding orders issued by Montana district courts after January 1, 1994.

State law requires that all payments in (1) and (2) above be made through the CSED. The CSED must process, distribute, and maintain complete records for these payments, including the date and amount of each payment, the date the CSED distributed the payment, and the name of the payee. In IV-D cases "payments" include collections of support from all sources, not just income withholding; records in IV-D cases must include the balance of support owed by the obligor.

The central payment processing unit is an expanded function of the CSED Technical Accounting and Payment Processing Unit (TAPP).

Note that in non-IV-D cases the CSED is not required to process payments from sources other than immediate income withholding, nor is the CSED required to maintain the balance of support owed in these cases.

Additional Income Withholding Requirements. In order to satisfy the statutory requirement for central payment processing the CSED also opens SEARCHS cases in Region 90 for immediate income withholding orders issued by the district court after January 1, 1994, for which there is no existing CCR case. These cases are not considered CCR cases, and the only information maintained on them is the information needed to execute the order (provided by the clerk of court) and the records maintained by the central payment processing unit. Only those cases for which income withholding payments are actually received are maintained by central payment processing.

Lien Directory. The CSED is required to maintain in the CCR a directory of child support liens filed by the CSED. The purpose of locating the lien directory in the CCR is to make lien information available to creditors and others through automated systems. The CSED's lien registry is maintained by the Office of the Administrative Law Judge; see sections CS 507.1 through CS 507.5 for specific procedures on creating and registering liens.

Terminology. The following terminology is used to distinguish among the types of child support cases subject to the procedures in this section:

IV-D case--a case in which CSED services are being provided. IV-D cases are those designated on the SEARCHS CAS screen as AFDC, NAFDC, IV-E FC, NAFDC FC, or MED SUPP ENF ONLY.

CCR case--a IV-D case, or, a case involving a Montana support or modification order entered after October 1, 1998.

Region 90 case--a non-IV-D case involving either (1) a Montana support or modification order entered after October 1, 1998 (a CCR case), or (2) an income withholding order issued by a Montana court after January 1, 1994, where (1) does not apply (a non-CCR case). Region 90 cases are those designated on the SEARCHS CAS screen as NON IV-D CCR or NON IV-D CC IW ONLY.

Procedure Contents. The PROCEDURES in the remainder of this section are divided into the following seven parts (individuals or units with responsibilities in each part are shown in parentheses):

I. COURT PROCESSING (district court, parties to the court action, clerk of court, tribal court)
II. REGISTRATION / INTAKE (CCRU, regional caseworker, SEARCHS)
III. PAYMENT PROCESSING AND DISTRIBUTION (TAPP)
IV. CERTIFICATION OF RECORDS (regional caseworker, CCRU)
V. REGIONAL CASE MANAGEMENT (regional caseworker)
VI. CASE CLOSURE (regional caseworker, CCRU)
VII. FEDERAL CASE REGISTRY (SEARCHS, Federal Case Registry, regional caseworker)

PROCEDURES

I. COURT PROCESSING

District Court

1. In a case involving entry or modification of a child support or immediate income withholding order, includes in the order the special provisions in step I-1a or I-1b below:

    a. Support order provisions (summarized):
        (1) The obligor and obligee must update, as necessary, the information contained in the reporting form described in step I-2 below.
        (2) In a subsequent child support enforcement action, due process requirements are satisfied upon delivery of the notice by regular mail to the address listed with the CSED Central Case Registry (CCR).
        (3) If the obligor is excluded from paying support through income withholding, and support later becomes payable to the CSED or through income withholding, then
            - support payments must be made to the CSED, and

- payments not made to the CSED do not constitute payment of support.

b. An immediate income withholding order must direct the payor to make payments through the CSED.

Parties to the Action

2. Upon action by the district court in (1) or (2) below, complete the Montana State Case Registry and Vital Statistics Reporting Form (the reporting form), and deliver the completed form to the clerk of court.
   (1) Entry or modification of a support order.
   (2) Action adjusting, terminating, granting relief from, or otherwise affecting a support order in a case
      - registered with the CSED Central Case Registry (CCR), or
      - in which the CSED has filed a notice of IV-D services.

Clerk of Court

3. Upon receipt of a completed reporting form, dockets the decree, judgment, or order resulting from the court action and, within 5 working days, electronically transmits the information contained in the reporting form to the CSED, via the Judicial Case Management System (JCMS).

4. Sends to the CSED a copy of an immediate income withholding order issued by the district court
   - during the period January 2, 1994, through October 1, 1998, if payments are being received.
   - after October 1, 1998, regardless of whether payments are being received; the copy must be sent within 5 working days after the withholding order is issued.

   If information on the underlying support order has been sent in step I-3, transmits the income withholding information electronically.

Parties to the Action

5. Inform the clerk of court when information listed on the reporting form changes.

Clerk of Court

6. Upon receipt of updated information in step I-5, transmits the information to the CSED via JCMS.

Tribal Court

7. Upon entering an order establishing, modifying, or otherwise affecting a support obligation, at the option of the tribe completes and mails to the CSED the form required in step I-2.

II. REGISTRATION / INTAKE

CSED Central Case Registry Unit (CCRU)

1. Upon receiving information from the clerk of court in step I-3 or I-4 above, or from the tribal court in step I-7, resolves the case by checking the SEARCHS data base for an existing SEARCHS case. If found, proceeds to step II-3; if not, proceeds as follows:

   a. For each support order or order affecting a support order, opens a SEARCHS CCR case in Region 90, using the information received from the clerk of court or from the tribal court. Processes the appropriate screens (CAS, SOD, and others) to capture the information and to designate the CCR status.

   b. For each immediate income withholding order, opens a SEARCHS non-CCR case in Region 90, using information contained in or accompanying the order, or received through the JCMS interface. Information maintained on SEARCHS for the non-CCR case is generally limited to the names and social security numbers of the obligor and obligee, the name of the employer, and the amount to be withheld.

   (Note that these cases are different from "direct income withholding" cases in Region 95, in which an income withholding order issued in another state is sent directly to a Montana employer, who may then pay the CSED.)

NOTE OF CLARIFICATION: STEPS 2 AND 3 BELOW both address case opening situations where there is a pre-existing SEARCHS case, but the incoming case is a different "type" (IV-D, CCR/non-IV-D, non-CCR). The responsibility for resolving the situation lies with the receiver of the incoming case--either the regional caseworker in step 2, or the CCRU in step 3.

Regional Caseworker

2. In the course of opening or reopening a regional IV-D intrastate or interstate case on SEARCHS, determines whether there is an existing Region 90 case involving the same participants.

   a. If so, proceeds as follows:

      (i) If the case is a CCR (Region 90) case, **requests the CCRU** (1) close any Region 90 accounts and (2) transfer the Region 90 case to the appropriate region. Once the case is transferred by the CCRU, ensures CAS is updated as necessary to show the case is now a IV-D case, and opens the appropriate new accounts. (The CSED must build new, IV-D accounts for former Region 90 cases because SEARCHS does not calculate or maintain the balance of support owed in Region 90 cases.)

      (ii) If the case is not a CCR case (that is, it is based on an income withholding order only), **requests the CCRU** (1) close any Region 90 accounts, and (2) close the Region 90 case. Once the Region 90 case is closed by the CCRU, opens the appropriate new accounts for the IV-D case, and proceeds as in II-2b below, incorporating the income withholding information as appropriate.

b. If not, proceeds to open a IV-D case; ensures the CAS screen shows the case is registered (open) in the CCR.

CCRU

3. For each court order received in step II-1 for which an existing SEARCHS case is found (IV-D or non-IV-D, CCR or non-CCR), proceeds in step II-3a, 3b, or 3c below.

   a. If the existing SEARCHS case is a IV-D case, updates CAS, SOD, and other SEARCHS screens as appropriate; sends a tickler to the regional caseworker re: receipt of the court order.

   b. If the existing SEARCHS case is a CCR non-IV-D case, updates CAS, SOD, and other SEARCHS screens as appropriate.

   c. If the existing SEARCHS case is a non-CCR case, and the order received is
      - a support order, closes the non-CCR case and opens a CCR case. Enters a case note referencing the closed non-CCR case for purposes of payment record certification (see step IV-1).
      - an immediate income withholding order, updates the non-CCR case as appropriate.

SEARCHS

4. For each immediate income withholding order received from the clerk of court in a non-IV-D case, generates a letter to the employer, the obligor, and the obligee explaining that any payments under the income withholding order must now be sent to the CSED. Generation of this letter is an automatic system function, triggered when the CCRU enters information about the withholding order in step II-1b, II-3b, or II-3c.

5. Upon receiving updated information sent by the clerk of court in step I-6, sends a tickler directly to the SEARCHS case owner--either CCRU or the regional caseworker.

CCRU

6. Upon receiving a tickler sent in step II-5 indicating updated information about the parties, resolves the information and updates the Region 90 case on SEARCHS as appropriate.

III. PAYMENT PROCESSING AND DISTRIBUTION

CSED Technical Accounting and Payment Processing Unit (TAPP)

1. Operates a central payment processing unit that receives, distributes, adjusts, and maintains records of payments in IV-D and Region 90 cases. (Does not create or maintain records of payments made before October 1, 1998, in Region 90 cases. Also, does not assess handling fees in Region 90 cases.)

2. Upon receipt of a payment in a IV-D or Region 90 case, distributes the payment (applies it to the appropriate participant) within two (2) business days after receiving the payment. (Note that "distribution" is not the same as "disbursement." In cases where a payment is distributed to the family (vs. the state), the state warrant actually disbursing the money is mailed at least one business day after the distribution date.)

SEARCHS

3. In situations where the obligor owes support in both a IV-D case and a Region 90 case (CCR or non-CCR), distributes income withholding payments as follows:

   FIRST, to current support in both cases, distributed proportionately with respect to the support amounts.

   SECOND, to arrears in the IV-D case, up to the income withholding DBD amount.

   THIRD, to arrears in the Region 90 case. (Note that since there is no arrears balance maintained for Region 90 cases, any amount remaining after satisfying the DBD in the IV-D case will be paid to the Region 90 obligee.)

IV. CERTIFICATION OF RECORDS

Regional Caseworker or CCRU

1. Upon request, generates payment records or makes copies of payment-related supporting documents maintained in the IV-D case or the non-IV-D income withholding case.

2. Certifies each payment record or document copy as follows (certifying signatures should be written in non-black ink):

   a. For a payment record, signs the certification block contained in the generated document.

   b. For a copy of a supporting document, stamps the document with the Department of Public Health and Human Services certification stamp, and signs and dates the stamped copy. For purposes of these procedures the "original" document on file with the CSED may be a facsimile copy of a court document, or a print-out of an optically scanned document.

V. REGIONAL CASE MANAGEMENT

Regional Caseworker

1. In an existing IV-D case, upon receiving a tickler sent in step II-3 or II-5 indicating new information has been received from the clerk of court, proceeds as follows:

    a. If the tickler indicates a support or modification order has been entered by the district or tribal court, checks the case file for a copy of the order; if none is found, obtains a copy from the court.

    Resolves the information received: updates the participant and case information on SEARCHS, takes appropriate action in the case, and proceeds with special actions in steps V-2 through V-4 as applicable.

    b. If the tickler indicates an immediate income withholding order has been issued by the district court, proceeds to step V-5.

    c. If the tickler indicates updated information about the parties has been received from the clerk of court, proceeds to step V-6.

2. If the CSED is in the process of establishing or modifying a paternity or support order, consults with the staff attorney to continue, adjust, or terminate the CSED process as appropriate. If the CSED will enforce the court order, proceeds in steps V-2a and V-2b below.

    a. Checks to see if the court order or any CSED order still in effect contains the deemed service of process warning described in step I-1a(2). If so, updates SOD accordingly. If not, **at the caseworker's option** works with the CSED staff attorney to prepare and send to the obligee and obligor a notice containing the warning (see MCA 40-5-907(7)); if proper service is obtained, updates SOD, indicating the warning is in effect pursuant to a subsequent notice.

    b. If the court order excludes the obligor from paying support through income withholding, checks to see if the order directs payment of support to the CSED. If not, under authority of MCA 40-5-909(3) and where appropriate prepares and sends to the obligor and obligee form CS-503.4A, Notification to Obligor, directing the obligor to send payments to the CSED.

3. If the CSED is enforcing a temporary support order, follows the procedures in section CS 401.4, Establishment of Temporary Support Obligation, to begin enforcement of the court order; also proceeds in steps V-2a and V-2b as applicable.

4. If the CSED is enforcing a non-temporary support order other than the court order,

consults with the staff attorney to resolve the situation. If the CSED will enforce the court order (because it modifies the support order the CSED is enforcing, or is determined to be the controlling order), takes appropriate actions to adjust enforcement. Adjustments may involve SEARCHS accounts, medical support enforcement, income withholding, participant status, or other areas. Also proceeds in steps V-2a and V-2b as applicable.

5. In an enforcement case, upon receiving a tickler sent in step II-3 indicating the court has issued an immediate income withholding order, proceeds in steps V-5a and V-5b below.

   a. Works with the CSED staff attorney to issue a Notice of Supersession under MCA 40-5-315(5). The notice should include the following provisions:
      (1) The CSED has the authority to supersede the court's income deduction order under MCA 40-5-202, 40-5-315, 40-5-402(6), and 40-5-909(5)(b).
      (2) The CSED income withholding order issued on [date] against the income of [obligor] supersedes the court's order of [date] against the same income.
      (3) Until the CSED terminates its order (a) the employer must make payments to the CSED, and (b) the CSED's order may not be superseded by any subsequent order of a court or other agency.

      If a CSED income withholding order is in place and no modification to the withholding order is needed, attaches a copy of the existing CSED withholding order to the notice. If there is no CSED income withholding order in place or the existing CSED withholding order should be modified, prepares a CSED withholding order (form Fed-IW) for current support and any previously noticed support debt, and attaches the withholding order to the notice. Sends the Notice of Supersession to the employer, with a copy to the court, and enters a SEARCHS case note for the notice.

      NOTE: Discretionary Process. This step assumes it is always beneficial to supersede the court's order in a IV-D case; it simplifies the process for the employer, and increases the enforcement potential by allowing for arrears collection and, if necessary, contempt action. In unusual cases, however, the CSED may wish to allow the court-issued withholding to remain in place, and the procedures in this step would not be required.

   b. In unusual cases, if the employer is making payments to a payee other than the CSED, and the CSED has elected not to supersede the court's order (or the supersession process will take some time), determines whether it is advantageous at this time to redirect payments. If so, works with the staff attorney to prepare and send to the employer an order signed by the appropriate CSED official redirecting payments to the CSED, pursuant to MCA 40-5-909(5). (The CSED's order supersedes the existing non-CSED order, and cannot be superseded by any subsequent non-CSED order.)

6. Upon receiving a tickler sent in step II-5 indicating updated information about the parties, resolves the information and updates SEARCHS as appropriate.

VI. CASE CLOSURE

Regional Caseworker

1. Upon closing a IV-D case, checks to see if the case should remain open in Region 90 (a support order was issued or modified in Montana on or after October 1, 1998). If so, updates the CAS screen, and electronically transfers the case to Region 90, retaining the physical file. (The CCRU will be notified automatically with the transfer. CAS will show the physical file located with the CSED regional office.)

   Upon being contacted by the obligee for relief in a case where the CSED superseded a court order for income withholding, then terminated withholding upon closure of the IV-D case, explains the obligee may ask the court to restore income deduction under Title 40 Chapter 5, Part 3.

CCRU

2. In a Region 90 case, closes the case on SEARCHS
   - upon receiving information in a CCR case that the underlying support order has been vacated by the court or is no longer in effect.
   - upon receiving information in a non-CCR case that the immediate income withholding order has been terminated.
   - upon receiving information in a non-CCR case that a CCR case for the same participants has opened (steps II-2a and II-3c).

VII. FEDERAL CASE REGISTRY

SEARCHS

1. Daily transmits CCR information to the Federal Case Registry (FCR).

   a. Transmits all CCR case changes. “Changes” include CCR case openings or reopenings, updates to existing CCR cases, and CCR case closures that have occurred since the last transmission. The following information is transmitted for each case:
      (1) Names, social security numbers, aliases, and dates of birth of the parties
      (2) A domestic violence indicator for any party whose whereabouts should not be disclosed
      (3) The IV-D/non-IV-D status of the case
      (4) Whether there is a support order in the case.

   b. In the daily transmission also identifies all participants in CCR cases for whom locate services from the Federal Parent Locator Service (FPLS) are requested. (These participants are identified according to certain SEARCHS parameters.)

(Note that transmissions to the FCR do not include Region 90 cases opened on the basis of an income withholding order alone.)

Federal Case Registry (FCR)

2. Upon receiving a state's central case registry transmission, updates the FCR data base and performs matching and notification functions in steps VII-2a through VII-2d below.

   a. Identifies any cases or participants submitted by the central case registry of more than one state.

   b. Performs "proactive matching" for the expanded FPLS by automatically comparing all non-child participants in FCR cases to information in the National Directory of New Hires (NDNH). (The NDNH contains W-4, quarterly wage, and unemployment insurance information submitted by all states.)

   c. For participants in FCR cases for whom regular ("external") FPLS locate services were requested, in addition to the matches performed in step VII-2b above, matches participant information against data bases maintained by various federal agencies, including the Department of Defense/Office of Personnel Management; the FBI; the IRS; the Social Security Administration; and the Veterans' Administration.

   d. Except as noted below, daily notifies each state of any FCR, NDNH, or FPLS matches found involving the state's IV-D cases or participants, and provides appropriate information from the data bases; also notifies the state of any updates to previous match information.

      EXCEPTION: If a domestic violence indicator is associated with a participant in an FCR case, the FCR is prohibited from providing any information about that participant.

SEARCHS

3. Upon receiving notification of
   - an FCR match involving a IV-D case or participant,
   - updated information on a previous FCR match,
   - NDNH information on a IV-D participant,
   - FPLS data base information on a IV-D participant, or
   - an FCR domestic violence indicator for a IV-D participant,

   processes the information through the applicable system edits to delete duplicate information, or to divert redundant or non-urgent information. For each FCR, NDNH, or FPLS match surviving the edits, sends a tickler to the regional caseworker.

(An example of an applicable system edit in this step is the "paying obligor" edit, which prevents incoming information on an obligor in a paying case from creating a tickler, but allows the information to update the SEARCHS case.)

Regional Caseworker

4. Upon receiving a tickler sent in step VII-3 above proceeds as follows:

    a. If the tickler indicates there is a case in the FCR with the same participants as the IV-D case, researches the other state's case via CSENet transaction (if available), by telephone, or in writing, and takes any action appropriate to resolve the IV-D case.

    b. If the tickler indicates there is FCR, NDNH, or FPLS information (including updates) for a IV-D participant, processes the information on SEARCHS and takes any action indicated in the IV-D case (follows locate leads, enforces on new assets, etc.).

    c. If the tickler indicates there is an FCR domestic violence indicator for a IV-D participant, immediately sets the domestic violence indicator for that participant on SEARCHS, and manually removes the participant's information from any CSED actions currently in progress.

SUPERSEDES

CS 201.2, Case Opening Letters, May 5, 1998.

REFERENCES

MCA 40-5-202(1), 40-5-203(1) and (2), 40-5-205, 40-5-412(4), and 40-5-909(2) through (5).

POLICY

Purpose of Case Opening Letter. When a case is opened or reopened the CSED sends a case opening letter to the obligee and the obligor or alleged father (AF). Generally, this letter serves four purposes: (1) it satisfies various notice requirements to the participant; (2) it extends a courtesy to the participant by confirming the initiation of a CSED case, providing the case number needed for inquiries to the CSED's Voice Response Unit or regional office, and explaining how the case will be processed; (3) it requests the participants's assistance in obtaining and maintaining necessary information during the progress of the case; and (4) it explains the CSED will take action in the case either directly or by requesting the assistance of another state.

Except as noted in the next paragraph, the case opening letter is mandatory. The same letter is used regardless of the participant's role in the case, how the case was initiated (direct application or agency/other state referral), where the participant resides, whether the case will be referred to another state, and the activity in which the case was opened (locate, paternity, establishment, enforcement).

The case opening letter is used only at case opening or reopening; it is not sent again with the start of "continued services" (when the public assistance case becomes a non-public assistance case).

Exception for Incoming Interstate. The obligee in an incoming interstate referral does not receive a case opening letter. Instead, the CSED sends an Acknowledgment of Interstate Referral to the initiating state.

Notices. The case opening letter contains the following notices. These notices are required by, or are needed for the fair application of, federal or state regulation or law (cites in parentheses):

(1) Payments through the CSED (MCA 40-5-412 and 40-5-909). The letter explains that all payments must be made through the CSED, and that the CSED will not allow credit for payments made directly to any person or agency other than the CSED. EXCEPTION: If the support order was not issued in Montana, and names a specific payee other than the obligee (e.g., a court or the IV-D agency of another state), the paying parent must send payments to the payee named in the order (PIQ 01-01). (See section CS 503.4 for further explanation and procedures.)

(2) Offset fees (45 CFR 303.72 (i) and 303.102(f)). The letter lists the amounts currently charged to the CSED and passed on to the non-public assistance obligee for offset of

(a) federal income tax refunds, (b) other federal payments to the obligor, and (c) Montana income tax refunds or other Montana payments to the obligor; it also tells the participant how to obtain updated fee amounts in future years.

(3) Social security numbers (CSED Legal Bureau directive; numerous provisions of the federal Social Security Act implementing tax offsets, voluntary paternity acknowledgment, central case registry, new hire reporting, parent locator service, and other child support tools). The letter explains the participant is not required to provide his or her social security number unless ordered to do so.

(4) Safeguarding/disclosing information (MCA 40-5-206(6)). The letter informs the participant that his or her address or other whereabouts information may be released when required for child support enforcement purposes, unless the participant provides a reason not to disclose it.

(5) Complaint process (45 CFR 303.35). The letter gives the address for complaint resolution, and the limits of CSED authority.

(6) Children's Health Insurance Program (CHIP) (MCA 40-5-806(5)). The letter summarizes eligibility for and benefits of Montana's CHIP, and lists the locations where applications are available.

(7) Equal agency services (federal laws establishing civil, rehabilitation, and disability rights). The letter includes a statement affirming the state's non-discrimination policy and practices.

PROCEDURES

Regional Staff

1. **Sending Case Opening letter.** In conjunction with the opening or reopening of a CSED case, prepares and sends to the obligor/AF and the obligee by regular mail form CS-201.1C, Case Opening Letter, following special instructions in steps 1a through 1c below if applicable.

   NOTE: SEARCHS Generation. Generation of this form on SEARCHS automatically produces two copies of the letter, one addressed to the obligee, one addressed to the obligor/AF. If necessary in 1a through 1c below, the user may omit either of the letters by selecting the corresponding document generation option.

   a. If the obligor/AF is not located, follows instructions in step 2 for the obligor/AF letter.

   b. If the case is an incoming interstate referral, omits the letter to the obligee and follows regular procedures for sending the Acknowledgment of Interstate Referral to the initiating state.

c. In a paternity case involving multiple alleged fathers, generates and sends one letter to each alleged father. In the letter to the obligee, either
   - adjusts the heading of the letter to include the names of all the alleged fathers, or
   - issues multiple letters to the obligee, each listing one alleged father.

2. **Unlocated Obligor/AF.** If the obligor/AF is unlocated, evaluates the available address information and proceeds in step 2a or 2b below as applicable:

   a. If there is a reasonable chance the letter can be delivered, sends the letter to the obligor/AF in step 1(a) and monitors for presumed delivery. If the letter is returned undelivered, proceeds with locate efforts and repeats this step (2(a)) for the obligor/AF when a better address is obtained.

   b. If address information is completely lacking or is known to be incorrect, proceeds with locate efforts, delaying action on the case opening letter to the obligor/AF until further information is obtained.

3. **Coordination with Paternity Procedures.** In a paternity case coordinates the mailing of the case opening letter to the alleged father with the Notification of Paternity Claim sent in section CS 601.3. The two documents may be sent in the same envelope only if the envelope is marked "Personal and Confidential" as required in section CS 601.3.

   NOTE: The case opening letter does not replace, nor is it replaced by, the Notification of Paternity Claim; the two documents serve different purposes, and both are required.

4. **Redirecting Payments.** If at the time of case opening or reopening the obligor is subject to a support order that directs the obligor to send payments to a Montana Clerk of Court, follows procedures in section CS 503.4 to redirect payments received by the clerk of court to the CSED.

   NOTE: Notifying the Obligor and Employer. In cases where the order was issued in Montana, or where the order names the obligee as the payee (or fails to name any payee), the CSED notifies the obligor and any employer to make payments directly to the CSED. In this situation the request to the Montana clerk of court is used to catch any payments sent to the clerk of court despite these notifications. In cases where the non-Montana support order names a payee other than the obligee, direct payment by the obligor or employer to the CSED does not apply--see section CS 503.4 for procedures in these situations.

SUPERSEDES

CS 201.4, Temporarily Unworkable Cases, March 1, 2001.

REFERENCES

45 CFR 303.11; MCA 53-4-248(3).

POLICY

The CSED considers a case "temporarily unworkable" if further action cannot be taken because of practical or legal constraints, and the case does not qualify for closure under federal regulation. (See section CS 201.5, Identifying Closed Case Status, for a discussion of federal case closure criteria.)

Specifically the CSED recognizes the following categories of temporarily unworkable cases:

(1) Dual public assistance. When both the obligor and the obligee are receiving cash public assistance in Montana, by law the CSED cannot establish or enforce a financial support obligation, nor can a support debt accrue [MCA 53-4-248(3)]. These cases are temporarily unworkable for purposes of establishment and enforcement; the CSED may, however, proceed to establish paternity.

Note that where only the obligor is receiving cash public assistance, the CSED must proceed to enforce support to the extent possible; public assistance money itself, however, is exempt from execution.

(2) Obligor incarcerated. An obligor is considered incarcerated for purposes of this section if he or she is an inmate of a state or federal prison, or is being held in a county jail or other detention facility under a sentence of confinement of several months or more.

Cases involving an incarcerated obligor are considered temporarily unworkable except for non-contestable actions such as asset location or federal offset In enforcement cases arrears continue to accrue during the period of incarceration.

DISCUSSION: The CSED does not serve notice of a contestable action on an incarcerated obligor. Under Montana law, if an obligor requests and receives a telephone hearing, he or she is then eligible to request a *de novo* in-person hearing. However, at this time the CSED cannot accommodate such a request, as it lacks the resources to provide sufficient security for the hearing. Because the obligor could be denied the due process of an in-person hearing in the administrative action, CSED policy prohibits initiation of the action via notice.

ENFORCEMENT EXCEPTIONS: In cases where the CSED served and resolved an income withholding notice before the obligor was incarcerated, the CSED may proceed with the withholding action against available assets. Also, the CSED may initiate an enforcement action upon a determination by regional supervisory and legal staff that the assets involved justify the resources needed to bring the action to a conclusion.

For purposes of the above enforcement exceptions, seizable or withholdable assets may include accounts held at the correctional institution that contain money earned by or deposited on behalf of the obligor during the incarceration, as well as regular "outside" accounts and other assets belonging or owing to the obligor.

PATERNITY EXCEPTION: In the case of an incarcerated alleged father who has refused voluntary genetic testing and whose participation is needed to resolve paternity in the case, the CSED may pursue the paternity action through its legal unit. The CSED staff attorney may file an action in district court, or may proceed with some other judicial or administrative method that is suitable to the facts of the case and that meets the requirements for due process (see DISCUSSION above) and security of the parties. The CSED may, however, decide not to pursue paternity if it determines that further use of CSED resources would not be beneficial in the case.

MODIFICATION EXCEPTION: If a party requests review of the support obligation while the obligor is incarcerated, the CSED may proceed with the action only if (1) the obligor waives any right he or she would have to an in-person hearing during the course of the review and modification process and (2) the requestor proves a change of circumstances that is not related to the incarceration. Under Montana case law, involuntary incarceration--in and of itself--is not so substantial and continuing a change of circumstances as to make an existing child support order unconscionable, or as to warrant modification.

(3) Obligor temporarily disabled. An obligor is temporarily disabled for purposes of this section if there is clear evidence that a temporary mental or physical disability deprives the obligor of the ability to earn income.

ESTABLISHMENT: An establishment case against a temporarily disabled obligor is considered temporarily unworkable--and the CSED will not establish a support obligation--if no income or assets can be identified that can be used in a guidelines determination.

ENFORCEMENT: An enforcement case against a temporarily disabled obligor is considered temporarily unworkable if no income or assets can be identified that can be seized or attached for support. (Note that the *possibility* of a federal or state offset does not represent seizable income or assets.) Arrears continue to accrue during the period of disability.

NOTE: Benefits Income Subject to Restrictions. Note that disability-related benefits may or may not be available for guidelines calculations or for execution by seizure--see the Benefits Bulletin and Table at the beginning of section CS 200 for the type of benefits in question.

MODIFICATION: In the case of a request for review where the obligor is temporarily disabled, the CSED follows regular procedures in sections CS 408.3 and CS 404.1 in determining whether to grant the review and, if the review is granted, in applying the Montana Child Support Guidelines according to the facts of the case.

PATERNITY: In a paternity case against a temporarily disabled alleged father the CSED proceeds with the paternity action despite the alleged father's disability.

(4) Obligor a minor. Because the CSED does not establish a support obligation against a parent who is under the age of majority, establishment cases where the obligor is a minor are considered temporarily unworkable. The same principle applies to establishment of a medical support obligation against a minor obligor or a minor obligee.

Also, the CSED does not enforce a support obligation established by another tribunal against a minor obligor. However, the CSED will proceed to establish paternity against a minor alleged father; this action calls for specially adapted procedures, as explained in section CS 605.2.

PROCEDURES

Caseworker

1. Identifies a temporarily unworkable case according to specific conditions in POLICY, this section. Changes the case status to "inactive" on SEARCHS; enters a case note stating the case is temporarily unworkable and giving the basis for the unworkable status. Refrains from taking any restricted actions while the unworkable status applies.

   Note that regular, system-initiated locate interfaces, as well as "passive" enforcement remedies such as federal and state offset, credit bureau reporting, debt publication, and obligor billing, will continue for inactive cases unless suppressed by the caseworker. These actions may or may not be "restricted," depending on the reason for the inactive status. For example, state offset and credit bureau reporting involve an opportunity for a contested case hearing; because the hearing can be in person if the obligor requests it, the CSED cannot pursue these remedies against an incarcerated obligor (see POLICY).

2. Regularly monitors the case for changes in the "unworkable" status; sets system ticklers for six-to-twelve month intervals, or the date circumstances are expected to change, whichever is sooner. In the case of an incarcerated obligor, contacts the parole or probation officer or the correctional institution to identify an expected date of release or parole. Other changes affecting temporarily unworkable status could include
   - the obligor recovers from the disability;
   - the minor obligor reaches the age of majority;
   - the CSED discovers usable income or assets; or
   - cash public assistance to one or both of the participants is discontinued.

3. Reinstates "active" status in the case when indicated by case facts.

SUPERSEDES

CS 201.5, "Identifying Closed Case Status," March 28, 1996.

REFERENCES

45 C.F.R. 303.11; OCSE-AT-99-04.

POLICY

The purpose of this section is to provide instructions for identifying and properly closing cases that are eligible for termination of CSED services.

Definition. For purposes of this section, the following definition applies:

Recipient of Services--any individual for whom the CSED has received a public assistance referral; or a formerly referred individual who has not declined continuing CSED services; or an individual not receiving public assistance who has applied for CSED services.

Note that this definition may apply to noncustodial parents as well as to custodial parties.

CASE CLOSURE CRITERIA

Federal regulations, expressed at 45 C.F.R. 303.11(b), define twelve specific closure criteria, at least one of which must be met for an open case to become eligible for termination of IV-D services.

The twelve closure criteria are as follows:

(b)(1) **There is no longer a current support order and arrearages are either under $500 or unenforceable under state law.**

NOTE 1: For cases meeting this criterion, the recipient of services must be notified in writing of the CSED's intent to close the case 60 calendar days before closure.

NOTE 2: The (b)(1) closure criterion is also applicable when a support order never existed.

NOTE 3: Reconciliation of the custodial and non-custodial parent with no arrearages owed to the State of Montana, or arrears below the established $500 ceiling, allows for case closure under this criterion.

(b)(2) **The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken.**

NOTE 1: For cases meeting this criterion, the recipient of services must be notified in writing of the CSED's intent to close the case 60 calendar days before closure. In circumstances when the recipient of services was the non-custodial parent or putative father, it is acceptable to send this notification to either the deceased's personal representative, executor of the estate or next of kin.

NOTE 2: Information from the custodian in a Non-IV-A case that the non-custodial parent is deceased may act as the sole verification source for purposes of case closure. Remember, however, inquiries into possible estate or probate information should be made as well.

NOTE 3: Open public assistance cases require additional substantiation of non-custodial parent's or putative father's death. Acceptable forms of verification may include: a copy of the death certificate, a copy of the obituary or newspaper article reporting the death, evidence from a governmental agency (i.e., Vital Records Bureau), or written correspondence from the TANF, IV-E, or interstate IV-D caseworker assigned to the case. Notification from the custodial parent will not suffice as the sole verification source in an open public assistance case.

NOTE 4: In an effort to locate possible assets of a deceased non-custodial parent, document any and all locate attempts prior to closure. This would include inquiries with the custodial parent and clerk of the district court regarding possible estate or probate information.

(b)(3) Paternity cannot be established because:

(i) The child is at least 18 years old and action to establish paternity is barred by a statute of limitations.

(ii) A genetic test or a court or administrative process has excluded the putative father and no other putative father can be identified.

(iii) In accordance with 45 C.F.R. 303.5(b), the IV-D agency has determined that it would not be in the best interests of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending.

(iv) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the IV-D agency with the recipient of services.

NOTE 1: For cases meeting this criterion, the recipient of services must be notified in writing of the CSED's intent to close the case 60 calendar days before closure.

NOTE 2: For this criterion, the term "identity" means the biological father's first and last name.

(b)(4) The non-custodial parent's location is unknown and the CSED has made diligent efforts in accordance with 45 C.F.R. 303.3, all of which have been unsuccessful,

to locate the non-custodial parent:

(i) over a three-year period when there is sufficient information to initiate automated locate efforts; or

(ii) over a one-year period when there is not sufficient information to initiate automated locate

NOTE 1: For cases meeting this criterion, the recipient of services must be notified in writing of the CSED's intent to close the case 60 calendar days before closure.

NOTE 2: For this criterion, the term "non-custodial parent's location" means the residential or employment address of the non-custodial parent.

NOTE 3: Federal regulations at 45 C.F.R. 303.3 dictate the "diligent efforts" that a State must take when attempting to locate a non-custodial parent. Specifically, within 75 calendar days of opening a case, the CSED must access appropriate location sources in an attempt to find the parent. If this initial locate attempt is unsuccessful, then the CSED is required to repeat location efforts on a quarterly basis, or immediately upon receipt of new locate information on the non-custodial parent.

(b)(5) **The non-custodial parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no evidence of support potential. The CSED must also determine that no income or assets are available to the non-custodial parent which could be levied or attached for support.**

NOTE 1: For cases meeting this criterion, the recipient of services must be notified in writing of the CSED's intent to close the case 60 calendar days before closure.

NOTE 2: If the CSED has identified possible assets for seizure, or the recipient of services has presented information which may lead to the identification of seizable assets, action must be taken to verify this information prior to the determination of whether or not the case is eligible for closure under this criterion.

(b)(6) **The non-custodial parent is a citizen of and lives in a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and the CSED has been unable to establish reciprocity with the country.**

NOTE 1: For cases meeting this criterion, the recipient of services must be notified in writing of the CSED's intent to close the case 60 calendar days before closure.

NOTE 2: Native Americans residing on tribal reservations do not reside in a "foreign country" for purposes of a (b)(6) closure. Therefore, case closure would not be appropriate when Native American jurisdictional issues inhibit the CSED from providing certain IV-D services.

(b)(7) **The CSED has provided location-only services as requested under 45 C.F.R. 302.35 (c)(3).**

NOTE 1: Cases meeting this criterion may be closed immediately.

NOTE 2: Location-only services are provided solely by the CSED State Parent Locate Unit.

(b)(8) **The Non-IV-A recipient of services requests closure of a case and there is no assignment to the State of medical support or of arrearages which accrued under a support order.**

NOTE 1: Cases meeting this criterion may be closed immediately.

NOTE 2: Acceptable methods by which a recipient of services may request closure under this criterion include: telephone call, personal visit, or written communication. For future reference, document in the case record the method by which the closure was requested.

NOTE 3: In cases where the non-custodial parent was the applicant for IV-D services, the CSED may not close the case based on the custodial parent's request. However, in cases such as this, if there is no assigned support to the State, the non-custodial parent has the right to request and receive immediate closure of the case under (b)(8).

NOTE 4: If a IV-D program in another State is specifically requesting closure on behalf of a recipient of services who has opened a case in that State, and there are no arrears assigned to the State of Montana, the CSED may close its case under (b)(8).

(b)(9) **There has been a finding of good cause or other exceptions to cooperation with the CSED and the State or local IV-A, IV-D, IV-E, or Medicaid agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative.**

NOTE 1: Cases meeting this criterion may be closed immediately.

(b)(10) **In a Non-IV-A case, the CSED is unable to contact the recipient of services within a 60 calendar day period despite an attempt by at least one letter sent by first class mail to the last known address.**

NOTE 1: The 60 calendar day time period at (b)(10) commences with the date the letter is mailed to the recipient of services.

NOTE 2: The 60 calendar day time period at (b)(10) is entirely separate from the 60 calendar day time period required at 45 C.F.R. 303.11(c). For example, an appropriately closed case under this criterion would need to follow the below 4 month schedule:

May 1, 1999	The CSED issues a letter to the recipient of services.
May 5, 1999	The letter is returned marked, “moved, left no forwarding address” or “unclaimed”.
June 30, 1999	On the 61st day of the letter’s issuance, if the location of the recipient of services has not been identified, the CSED generates FORM CS-201.5B, "60 DAY CLOSURE LETTER".
August 29, 1999	On the 61st day of the “60 DAY CLOSURE LETTER” issuance, if the recipient of services has not contacted the CSED, the case may be closed.

NOTE 3: Check available resources, including TEAMS, directory assistance, and the case referral in an attempt to locate the recipient of services. Document resources which have been checked.

(b)(11) In a Non-IV-A case, the CSED documents the circumstances of the recipient of services's noncooperation and an action by the recipient of services is essential for the next step in providing services.

NOTE 1: For cases meeting this criterion, the recipient of services must be notified in writing of the CSED's intent to close the case 60 calendar days before closure.

NOTE 2: In documenting the noncooperation of the recipient of services, it should be recognized that the requested action must be essential for the next step in providing CSED services. For example, a completed financial affidavit or paternity affidavit is considered an essential document for providing establishment services. Typically, a letter requesting this information will include document CS-202.1A, "10 Day Letter - Request for Additional Information".

NOTE 3: A case may not be closed under the (b)(11) criterion solely because the recipient of services is taking separate enforcement action on the case. The case can be closed for noncooperation only if the recipient of services refuses or fails to take an action or provide information which is necessary for the next step in providing IV-D services.

NOTE 4: A case may not be closed under the (b)(11) criterion solely because the recipient of services refuses to sign a repayment agreement for improperly retained support or fails to repay improperly retained support after signing a repayment agreement.

(b)(12) **In an interstate case, the CSED documents the circumstances of the initiating state's noncooperation and an action by the initiating state is essential for the next step in providing services.**

NOTE 1: For cases meeting this criterion, the initiating state must be notified in writing of the CSED's intent to close the interstate case 60 calendar days before closure.

NOTE 2: The program standards appearing at 45 C.F.R. 303.7 drive the decision as to whether or not an initiating state has failed to take an action that is essential to the next step in providing services. The requirements and time frames at §303.7 are to be used by the responding state in making this determination.

FORM CS-201.5B, "60 DAY CLOSURE LETTER"

In cases meeting the criteria (b)(1) through (b)(6) and (b)(10) and (b)(11), the CSED must notify the recipient of services in writing 60 calendar days prior to closure of the CSED's intent to close the case. CSED policy dictates that this notification be accomplished through issuance of document CS-201.5B, "60 Day Closure Letter".

PROCEDURAL NOTE: Form CS-201.5B, "60 Day Closure Letter", should be issued to the recipient of services' current or last known address immediately upon the determination that one of the criteria (b)(1) through (b)(6) and (b)(10) and (b)(11) has been met.

- If no information in response to the notice is received by the end of the 60th day which could lead to CSED action, the case can be closed.
- If information in response to the notice is received on or before the 60th day which could lead to the next CSED action, the case will remain open.

GENERAL CASE CLOSURE ISSUES

Recipient of Services Relocating Out of State

There are no residency requirements to be eligible for IV-D services, therefore, a recipient's leaving the State of Montana does not immediately justify the open CSED case being closed.

Continued Services

When a family is no longer eligible for Temporary Assistance for Needy Families (TANF),Job Supplemental Program (JSP), foster care, Medicaid or Transitional Child Care (TCC) services, the CSED is required to notify the family that IV-D services will continue unless the family states to the CSED that services are no longer desired.

Outstanding CSED Actions/Proceedings

When closing a case, CSED staff are reminded to review the file for any outstanding administrative actions or judicial proceedings that must be terminated prior to case closure. Examples include: releasing liens, terminating withholding orders, dismissing health insurance penalties (restrictions apply), releasing clerk-of-court redirections, and terminating license suspensions.

Retaining Case Records

The CSED must retain all records of a closed case for a minimum of three years, in accordance with 45 C.F.R. 303.11(d).

SUPERSEDES

CS 250.1, Native American Jurisdiction, October 1, 2000

GENERAL INFORMATION

All Montana Indian tribes with reservations have an established tribal court system. The Landless Band of Little Shell Chippewa has an office in Havre but no reservation or tribal court. The tribal codes of Montana's seven reservations include procedures to determine paternity, establish support and enforce support.

When a participant is a tribal member, eligible for enrollment or considered a member of a particular Indian Community, it may be an infringement upon tribal sovereignty to use the State's administrative or court processes rather than deferring to tribal court to take action. The following procedures are designed to assist you in determining whether the CSED can proceed, using our administrative processes, to establish paternity, establish a support obligation or enforce a support obligation.

DEFINITIONS

Asset located on reservation: any asset physically held, or located, on a Montana reservation. This includes bank accounts.

Asset tribally owned: any asset owned or controlled by a Montana tribe.

Lives on reservation: the individual lives on a Montana reservation, OR lives just outside a reservation in an area that is designated as ceded or considered a part of the reservation.

NAJ: Native American Jurisdiction

Tribal Employer: the employer is either a tribal agency (includes tribal government; a tribal incorporated business; or, other tribal institution, college, or school) or any other business located on a reservation and owned by a Native American individual or corporation.

> **NOTE:** When the Obligor/NCP **IS NOT** a tribal member, Tribal employer **DOES NOT** include the BIA or any other federal agencies or state schools.

Tribal Member: an individual who is enrolled, enrollable, or considered by the Tribe to be a member of the Indian Community as verified by a particular tribe.

Work performed on reservation: the work is physically done within the boundaries of a Montana reservation. It **DOES NOT** include state or federal benefits such as unemployment insurance benefits, workers' compensation, or social security benefits.

POLICY

All cases, involving Native American participants, are subject to all CSED actions and services until, and to the point at which, a jurisdictional barrier stops or

temporarily interrupts such actions.

CASE INITIATION will be taken on Native American cases, the same as in any other case, according to the CSED Policy Manual at sections 601 - 606 for Paternity, sections 400 - 408 for Establishment, all of section 405 for Hearings, all of section 408 for Modifications, section 500 - 530 for Enforcement actions.

ENROLLMENT INFORMATION will be gathered, for all participants of the case to allow the caseworker to make a jurisdiction determination, as described in this section.

AFTER MAKING THE JURISDICTION DETERMINATION, and depending on that determination, if there are no jurisdictional barriers and until the jurisdictional factors change, the case will proceed with all **subsequent case activities** as are required in the sections noted above and according to all other applicable policies of the CSED.

EXCEPTION: Occasionally there may be a special and/or limiting agreement that has been entered into by the CSED and an individual tribe of this state that prohibits license suspension or other enforcement actions. If there is a question, consult your regional Native American Representative or legal staff.

PROCEDURES

Technician/Caseworker/Intake Worker

1. Upon receiving a DPHHS-FA/CS-332 (TANF related), a CFS/DOC/CSE-306 (foster care referral), an NAFDC/NTANF application, pending case, a case transferred from another CSED regional office, an incoming Interstate/UIFSA case, **OR** upon a change in the case activity status, the caseworker checks to determine if any of the case participants are verified or alleged to be a Native American. If yes, sets the case status indicator on the CAS screen to "K" and proceeds with this section.

   The caseworker determines the case activity status (LOC, PAT, EST, or ENF) and proceeds as follows:

   a. Caseworker reviews the information found in the case file and the long arm jurisdiction questionnaire to determine if Montana has long arm jurisdiction. The caseworker applies the rules for the bng arm jurisdiction analysis found at MCA 40-5-231.

      If there is no long arm jurisdiction and a UIFSA is necessary, it is not necessary to continue with the Native American jurisdiction determination at this point. The caseworker proceeds with normal processing to submit to the other state's central registry. The other state will determine whether they have jurisdiction to proceed.

   b. If all participants are located within Montana, or if Montana has long arm jurisdiction over the Obligor/NCP *in the other state*, proceeds with this section.

   c. If there is information that indicates an action is filed or proceeding in a tribal court, the Caseworker sends an Information Request to Clerk of Court CS-217. In addition to asking for documents concerning custody, paternity or support orders for the parties of the case, **the Tribal Court options must be chosen** to inquire whether any action is pending between the parties, the nature of the action and the cause number. It is strongly recommended that the caseworker specifically request documentation of per capita monies distributed to the Obligee by assignment of the Obligor for the purpose of child support.

2. Researches all available resources on SEARCHS and TEAMS and in the case file to determine if enrollment information is available.

   a. On SEARCHS, the information will be found on the PAR screen. However, it may be necessary to review the case files of other CSED cases for the same participant to investigate for the information as described in c., below.

   b. On TEAMS, the tribal enrollment information is found on the ETMT screen. It is assumed that the OPA *requires* verification of the information before it is entered on the TEAMS system.

   c. Reviews the application document and the case file(s) for documentation already received from the Obligee/CP or the Tribe concerning enrollment information.

   In a through c above: If information is located to verify enrollment that is not found on SEARCHS, the ***information must be updated*** on the PAR screen on SEARCHS.

3. If no information can be located to verify enrollment information for the parties of the case, the caseworker takes the following steps to obtain the information:

   a. Sends the appropriate Native American addendum (Paternity Addendum CS250.1A or Establishment Enforcement Addendum CS250.1G) to the applicant/recipient of services or to the initiating state agency. Enter the appropriate case note found on the Native American Jurisdiction events menu. The system will automatically set a tickler for the return of the document.

      If the Obligee/CP does not return the addendum, and the information cannot be located by any other manner, proceed with noncooperation recommendations against the TANF recipient or initiate the sixty-day closure notification to the Non-TANF applicant.

   b. At the same time and if the referral documents indicate a specific tribal affiliation for any participant, the caseworker sends the Tribal Enrollment Letter (CS250.1B) to the tribe specified to obtain and verify enrollment. The letter has spaces to inquire on all participants. **Do not** send separate letters to the same tribal enrollment office for each participant. Include a self addressed, stamped envelope. Enter the appropriate case note found on the Native American Jurisdiction events menu. The system will automatically set a tickler for the return of the document.

i. If documents are not received by the twenty-third day, mail a second request. It is not necessary to mail another self addressed, stamped envelope with a second request of the Tribal Enrollment letter. Please use *Second Request* stamp on the document.

ii. If the Tribal Enrollment office does not respond to the second request, the Obligee/CP is responsible for providing the information. If noncooperation or closure actions have not been started, proceed as in 3a above.

Technician/Caseworker

4. When a completed Addendum or Tribal Enrollment Letter is received, the caseworker uses the fact sheet to separate the facts for each participant of the case to facilitate jurisdiction analysis. This document **MUST BE** filed in the case file.

5. The caseworker determines the case activity based on the facts of the case.

   a. If the case is paternity or order establishment, the caseworker proceeds at step 6.

   b. If the case is enforcement, the caseworker proceeds to that section which begins with general information after step 9.

PATERNITY AND ESTABLISHMENT CASES

6. **Determine subject matter jurisdiction** by using the fact sheet and the Native American Jurisdiction chart for the corresponding case activity to determine if the CSED has subject matter jurisdiction to proceed, the tribe has exclusive jurisdiction, or the facts indicate that the matter is best deferred to the tribe or additional discussions are required with legal staff.

   a. If the CSED has subject matter jurisdiction, caseworker proceeds to step 7.

   b. If the CSED does not have subject matter jurisdiction, caseworker proceeds to step 8.

7. Before continuing with this section, the caseworker **MUST** determine whether the CSED has *long arm jurisdiction* to proceed with the service of notice documents upon any participants living on a reservation. The chart alerts the caseworker to situations when the rules for the long arm jurisdiction must be considered, reference MCA 40-5-231. If there is a question at this point, the caseworker should consult their supervisor, regional NAJ representative, or staff attorney.

If the CSED has long arm jurisdiction,

a. **Over both Obligor/NCP and Obligee/CP**, proceed with all appropriate actions in the case according to the CSED Policy manual and the corresponding case activity status for both paternity and order establishment actions.

b. **Over the Obligor/NCP only AND not over the Obligee/CP**, the caseworker takes the appropriate actions to issue and serve the NOCS on the Obligor/NCP.

   At the same time, the caseworker obtains a waiver of jurisdiction from the Obligee/CP before issuance of the NOCS to the Obligee/CP.

   If a waiver cannot be obtained, proceeds with service of a "third party" version of the NOCS, using a two parent calculation and the financial information of both parents.

   - An informational letter, a copy of the NOCS issued to the Obligor/NCP, a copy of the guidelines calculation, and a financial affidavit should be sent to the Obligee/CP.

   - The caseworker enters the appropriate case note concerning mailing of the financial affidavit to the Obligee/CP, found on the Establishment events menu. The system will automatically set a tickler for the return of the document.

8. If the Tribe has exclusive subject matter jurisdiction, the caseworker:

   a. Sends the NAJ LETTER TO CP RE: NO JURIS(CS250-1F);

   b. Sets the appropriate case status indicator on CAS; and,

   c. Reviews the case every 180 days for changes in the jurisdictional factors such as changes in address or employment.

   This **should include** a ten-day letter to the Obligee/CP for a status update on the progress in the Tribal Court. This is based on the requirement in the letter sent to the Obligee/CP in 8a above that notifies the Obligee/CP to seek the appropriate remedy through the Tribal Court.

9. When any of the subject matter or long arm jurisdiction factors change, repeat steps 4 through 8.

ENFORCEMENT CASES

The major consideration in determining whether the CSED may proceed to enforce a support obligation is the location and source of the income or assets.

Assets that are subject to CSED authority include state unemployment benefits, state worker's compensation benefits and most state-issued licenses. **EXCEPTION**: The caseworker must always check for a special or limiting agreement that has been entered into between the CSED and an individual tribe of this state that specifically prohibits license suspension.

Income earned on a reservation and property located on a reservation, such as a bank account or vehicle, is generally subject to withholding or seizure only when the tribal court issues the withholding or seizure order.

This area of the law and practice will continually be in a state of flux. When in doubt about whether the CSED may seize income or assets earned or located on a reservation, even if the obligor is nonnative, consult your regional NAJ representative or legal staff.

Technician/Caseworker

10. **Determines jurisdiction over the source of income** by using the fact sheet and the Native American Jurisdiction chart for Enforcement cases to complete the jurisdiction analysis.

    a. The caseworker sets the appropriate case status indicator on CAS.

    b. If it is determined that the ***CSED has jurisdiction*** over the income or assets, the caseworker proceeds to step 11.

    NOTE: If new or additional sources of income or assets are found or a change occurs in the source of the income or assets, the caseworker must determine jurisdiction over the source by repeating step 10 before proceeding.

    c. If it is determined that the ***CSED does not have jurisdiction*** over the income or assets, the caseworker proceeds to step 13.

11. The caseworker reviews the support order to identify the tribunal or agency that entered the final order.

    a. If the support order was entered in a **Montana** District Court, an administrative order entered by the CSED, or any order that is subject to immediate income withholding, the caseworker proceeds to step 12.

    b. If the support order was entered by a **Tribal Court or another state**, the caseworker incorporates the policy found at CS 510.3 concerning orders not subject to immediate withholding **before** proceeding to step 12.

12. The caseworker executes all required enforcement actions, including submission for federal and state income tax offsets.

The SERVICE OF NOTICES (NOI, SNOI, NSD) requires that the caseworker must conclude if the asset targeted for garnishment meets the definitions at the beginning of this section as **"tribally owned"** or **". . . on reservation**." (Due to the jurisdictional determination being based on the source of the income, the Obligor's enrollment status has no effect).

a. If the source is under tribal control, the CSED cannot proceed. The caseworker takes the actions as described at 13.

b. If the source is not considered to be under tribal control, the caseworker proceeds with issuance of the notice following standard enforcement policy.

If the Obligor is non-Indian and has assets located on a reservation, the caseworker may proceed to seize assets after it is verified that the assets are not tribally owned or controlled.

c. **VERY IMPORTANT**, if the caseworker discovers that CSED has an existing order to withhold in place and the source of income is tribally controlled, (as in 12a above) the matter should be discussed with the regional NAJ representative or legal staff before modifying or terminating the order.

13. The caseworker notifies the Obligee/CP that the CSED does not have the authority to take enforcement actions due to lack of jurisdiction over the source of the income.

14. The caseworker reviews the case every 180 days for changes in the jurisdictional factors such as changes in address or employment.

a. This **should include** a ten-day letter to the Obligee/CP for a status update on the progress in the Tribal Court. This is based on the requirement in the letter sent to the Obligee/CP in 8a above that notifies the Obligee/CP to seek the appropriate remedy through the Tribal Court.

b. When any of the subject matter or long arm jurisdiction factors change, repeat step 10.

Native American Jurisdiction Determination
Paternity and Establishment Cases

Tribal membership must be verified as enrolled, an enrollable descendent, or considered a member of the Indian community.

	CP is **Tribal Member** living **OFF** reservation with child(ren)	CP is **Tribal Member** living **ON** reservation with child(ren)	CP is Non-tribal member or non-Native American living **OFF** reservation	CP is Non-tribal member or non-Native American living **ON** reservation
NCP is **Tribal Member** living **OFF** reservation	State Jurisdiction	State Jurisdiction over NCP only. * (see below) CP	State Jurisdiction	State Jurisdiction over NCP only. * (see below) CP
NCP is **Tribal Member** living **ON** reservation	Possibly Exclusive Tribal Jurisdiction # (see below)	Exclusive Tribal Jurisdiction	Possibly Exclusive Tribal Jurisdiction # (see below)	Exclusive Tribal Jurisdiction
NCP is non-tribal/Non-Native American living **OFF** reservation	State Jurisdiction	State Jurisdiction over NCP only. * (see below) CP	State Jurisdiction	State Jurisdiction over NCP only. * (see below) CP
NCP is non-tribal/non-Native American living **ON** reservation	Need waiver or long arm over NCP - State jurisdiction over CP	Need long arm over both parties or a waiver of jurisdiction. If not, is tribal exclusive	Need waiver or long arm over NCP - State jurisdiction over CP	Need long arm over both parties or a waiver of jurisdiction. If not, is tribal exclusive

- **If there is any Tribal Court Order concerning the participants of the case, it is probable that the tribal court retains exclusive jurisdiction. If you have questions, consult your regional legal staff.**
- **In third party custodian situations, determine if the custodian is a tribal member or tribal entity. The placement location of the child is not considered when Tribal Social Services is the custodian, assume the child is placed within a reservation.**

* The caseworker needs to complete long arm jurisdiction analysis or obtain a waiver of jurisdiction from the designated party before proceeding with appropriate actions.

# The caseworker must determine if all the conception and birth facts occurred off the reservation. If yes, the State has concurrent jurisdiction and caseworker should proceed. If no, the tribe has exclusive jurisdiction. If there is a question, consult your regional legal staff.

Native American Jurisdiction Determination
Enforcement Cases

Tribal membership must be verified as enrolled, an enrollable descendent, or considered a member of the Indian community@.

Location of assets or income	Obligor **IS a Tribal** Member@ of any Tribe	Obligor is alleged but **NOT verified as a Tribal** Member@ of any Tribe	All other non-Native American Obligors
Assets are located **ON** or work is done **ON** a reservation for a **tribal employer** **	**No State jurisdiction** to garnish income or to levy against the asset	**No State jurisdiction** to garnish income or to levy against the asset	**No State jurisdiction** to garnish income or to levy against the asset
Work is done **ON** a reservation for a **non-tribal employer** **	**No State jurisdiction** to garnish non-tribal employer income ***** **Garnish exception** ***Unemployment, workers' compensation, Social Security, etc.***	**No State jurisdiction** to garnish income or to levy against the asset	**Garnish** the income ***** Exception has no effect
Work is done **outside** reservation boundaries or the asset is located **OFF** the reservation	**Garnish** the income or levy against the asset	**Garnish** the income or levy against the asset	**Garnish** the income or levy against the asset

** **Tribal employers may include employers that *appear* to be non-tribal. If an income source is questionable, clarify with the employer or check with legal.**

Case Status Code Indicators
for use on the CAS screen

CODE	DEFINITION OF THE CODE
K	Case needs additional information to make a Native American jurisdiction determination. The use of this code should be limited only to use on new (PND) cases or cases in locate (LOC). This code stays in place until the enrollment information is verified and entered on PAR for the Obligor.
L	The Native American Jurisdiction review has been completed. The determination has been made that there is no jurisdiction to proceed any further on the case until circumstances change. This code should be utilized for cases only where an order has not been established, (PAT) and (EST). **NOTE:** CASES coded L will be placed onto line 3 of the OCSE-157 and, as a result, be excluded for performance incentive purposes. **THEREFORE, use only** when all ***sub***-cases fall within the standards of no jurisdiction to proceed.
N	The Native American Jurisdiction review has been completed. The determination has been made that the State has jurisdiction to proceed with actions. This is to be used in all enforcement (ENF) cases in which the State has jurisdiction to proceed with collection actions against a source of income. This is also used in (PAT) and (EST) cases where the State has jurisdiction to proceed with actions to establish paternity and/or a support order.
H	The Native American Jurisdiction review has been completed. However, these cases are on hold, or inactive, for a reason other than NAJ jurisdiction. Examples of this include the following: the Obligor is incarcerated, receiving SSI, on assistance, or is a minor.
M	The case has a child support order and the determination has been made that the source of income available for seizure/withholding is under exclusive Tribal jurisdiction. This code should only be used for cases in and (ENF) status.

-- *Native American Facts* --
Subject Matter and Long Arm Jurisdictional Determination

Case No: ____________________ Case Activity: (Circle one) PAT / EST / ENF

	Obligor Name:	**Obligee Name:**	**Child 1 Name:**	**Child 2 Name:**	**Child 3 Name:**
Verified Tribal Member & Tribal Identifier	Yes or No	Yes or No	Yes or No	Yes or No	Yes or No
On reservation conception or birth			Yes or No Yes or No	Yes or No Yes or No	Yes or No Yes or No
Lives on or near reservation & what reservation	Yes or No	Yes or No	Yes or No	Yes or No	Yes or No
Assets located on reservation or off reservation	On Off	On Off	On Off	On Off	On Off
other off reservation ties to MT	Yes No	Yes No	Yes No	Yes No	Yes No

Please note additional information about assets and ties to Montana in case notes and on the back of this sheet.

? **CSED proceed / State Jurisdiction over all parties**
? **CSED proceed / State Jurisdiction over Obligor only, need Obligee waiver or use 3rd party NOCS**
? **Tribal Exclusive Jurisdiction / CSED cannot proceed** until jurisdictional facts change

Tribal Identifiers

AI	Assiniboine
AR	Arapaho
AS	Assiniboine/Sioux
BD	Blood
BL	Blackfeet
CC	Chippewa Cree
CR	Crow
FL	Flathead
GV	Gros Ventre
KO	Kootenai
LS	Little Shell (no reservation--landless Indians)
NC	Northern Cheyenne
NP	Nez Perce
OT	Other (out of state)
PI	Piegan
SA	Salish
SH	Shoshone
SX	Sioux (out of state tribe)
UU	Enrolled, tribe unknown

Reservation Codes

BL	Blackfeet (BL)
RB	Rocky Boy (CC)
FL	Flathead (KO, SA)
CR	Crow (CR)
NC	Northern Cheyenne (NC)
FP	Fort Peck (AI, AS, and SX)
FB	Fort Belknap (AI, GV)

Jurisdiction determination done ___/___/______, by ______________________

For use with section CS 401.3
August 1, 2003

NOCS BULLETIN--NON-GUIDELINES AMOUNTS

Amounts for Non-Guidelines Determination of Support Obligation

Please use the amounts in the following table to determine a support obligation when the Montana Child Support Guidelines do not apply. The amounts are effective August 1, 2003, and will remain in effect until further notice. They represent the minimum amount necessary to support one or more children in Montana and are based on the family assistance benefit amounts.

Number of Children	Support Amount
1	$298
2	375
3	452
4	530
5	607
6	684
7	761
8	838
9	915
10	991

SUPERSEDES

CS 401.3, Notice and Order Concerning Support, October 26, 2003

REFERENCES

45 CFR 303.4 and 303.101; MCA 40-5-225 through 40-5-227

POLICY

Process for Establishing a Support Obligation. The CSED establishes the support obligation of a parent in a CSED case by entering a support order requiring the parent to provide child support, medical support, or both for the children named. One support order is generally used to establish the obligations of both parents; the order contains a child support obligation and a medical support obligation for the obligor, and a medical support obligation for the obligee parent. If the obligee is not a parent but a "third-party" custodian, the order contains obligations for the obligor only.

"Obligated Parent" Defined. For purposes of this section and sections CS 401.4 and CS 401.5, the term "obligated parent" means the obligor or the parent obligee. A third-party custodian is not an obligated parent. A parent who is neither the obligor nor the obligee in the case cannot be an obligated parent.

Conditions for Establishing a Support Obligation. The CSED may enter a support order against a parent or parents when the following conditions apply:

(1) There is no existing child support order against the obligor
(2) The obligor is not a minor
(3) The obligor"s paternity of the children is established or is not at issue; or, a paternity action against the obligor is pending in a Montana district court and a temporary support order is appropriate (see section CS 401.4)
(4) Either the obligor or the obligee is not receiving public assistance money.

Jurisdiction Over Out-of-State Obligee. The CSED cannot establish the medical support obligation of an obligee parent living out of state unless personal jurisdiction over that parent is established under 40-5-231 and 40-5-145, MCA, either by consent of the parent or by long-arm authority.

Jurisdiction by **consent** is established if any of the following conditions applies:

(1) The parent submits a direct application for services to the CSED.

(2) The parent is the obligee in a IV-D interstate case referred to Montana **and** the parent has consented to the jurisdiction of the initiating state by
- applying for IV-D services with that state, or
- failing to refuse continued services after becoming ineligible for TANF or Medicaid.

NOTE: Public Assistance, Obligor-Applicant Cases Not Included. The obligee's receipt of public assistance benefits in the initiating state is not necessarily a consent to the personal jurisdiction of that state. Also, in cases where the obligor (not the obligee) is the applicant in the interstate responding case, the initiating state may or may not have jurisdiction over the obligee. In these cases the CSED has personal jurisdiction only if the parent consents in (3) below, or long-arm jurisdiction as described below applies.

(3) The parent signs a document waiving any contest to personal jurisdiction.

NOTE: Waiver Required in Public Assistance Cases. In the case of an incoming interstate TANF or Medicaid referral the CSED requires the waiver in (3). The CSED notifies the initiating state at the time of case opening that a waiver signed by the obligee is required, and that until the waiver is received the CSED cannot proceed with the case.

Jurisdiction by **long-arm authority** is established if the parent has sufficient contacts with Montana under 40-5-231(1) and 40-5-145, MCA (for example, the parent previously resided with the children in Montana). In questionable cases a determination by the CSED regional legal unit may be required.

Party Status of Obligee. If personal jurisdiction is established over a parent obligee, the CSED makes the obligee a party to the establishment action by serving him or her with notice under this section. **The obligee is a party for purposes of the establishment action only.** In subsequent enforcement actions (except enforcement of medical support against the obligee)the obligee is not a party, and cannot request a hearing or present objections in a hearing requested by the obligor.

Noticed Amounts--Guidelines Determinations. The CSED alleges support amounts due by serving a Notice and Order Concerning Support (NOCS). Amounts in the notice must be based on the Montana Child Support Guidelines, except in cases where the CSED does not have sufficient financial information to perform a guidelines calculation. CSED policy defines "sufficient financial information" as any information that can be used to reasonably approximate the obligor"s income or ability to earn income. This policy presumes that all other information needed for an initial guidelines determination (income of obligee parent, deductions from income) can be obtained or approximated based on knowledge of the case.

In initially determining noticed amounts according to the above policy, the caseworker must take the following actions in all cases, regardless of whether Financial Affidavits are on file:

(1) Actively search for information about the obligor"s earned and unearned income, using available sources and leads (SEARCHS ESD data, federal 1099 information, completed Financial Affidavit, suggestions from the other parent about possible assets or unreported employment).

(2) When appropriate, determine the obligor" s qualifications and time available for earning income, and impute income according to earning capability. Generally, imputation is appropriate when any of the following apply:

(a) The obligor is qualified for employment at a higher wage than he or she is currently earning (for example, the obligor is licensed as a plumber but is working at an unskilled or lower-wage job, or is unemployed).

(b) The obligor is employed part-time; income should be imputed at the full-time amount, unless there is information indicating a special limitation on earning capability.

(c) The obligor has seasonal employment; monthly income should be imputed by adding the actual or projected income for the seasonal months, to a reasonable imputed income (say, minimum wage amounts or unemployment benefits) for the off-season months, and dividing by 12.

(d) No information can be obtained about where or whether the obligor is currently employed,

- but there is evidence the obligor is qualified for employment at a level above minimum wage (for example, the obligor was able-bodied when last seen, and is known to have been employed in the timber industry in the past); income should be imputed at the higher level.
- and there is no evidence of qualification above minimum wage, but the obligor is known to have worked at minimum-wage jobs in the past; income should be imputed at minimum wage.

If nothing at all is known about the obligor" s current ability to earn, income should not be imputed at any level (see "TANF Exception" below).

(3) Upon obtaining a reasonable approximation of income for the obligor, obtain or impute all other information needed for a guidelines calculation by consulting case information or contacting the obligee parent. In the absence of any information to the contrary, the income of the obligee parent may be imputed at minimum wage, and the remaining information completed by setting expenses and non-standard deductions at $0.

If a reasonable approximation of income for the obligor is not possible, the exception in the following paragraph applies.

TANF Exception. The CSED alleges non-guidelines support amounts only when it is impossible to identify or impute obligor income according to (1) or (2) above. In these cases the notice must allege amounts based on the greater of

- the maximum amount of public assistance payable to the child under the Temporary Assistance to Needy Families (TANF) program, or
- the child" s actual needs as alleged by the obligee (the CSED does not solicit allegations of the child" s needs, but assumes these are represented by the TANF amount unless otherwise advised).

As a matter of CSED policy, notices containing non-guidelines amounts should be very rare, and should be issued only after the caseworker has made every reasonable effort to obtain information for a guidelines calculation.

Confidentiality of Information Between Parents. Information about a parent" s employment, financial condition, medical condition, identification numbers, household, or other families is not routinely provided to the other parent except as it is reflected in a guidelines worksheet. The CSED provides a copy of a parent" s Financial Affidavit to the other parent only upon request, and only for child support-related purposes. The CSED does routinely list the mailing addresses of the obligor and obligee on the notice of the establishment action. If a parent or custodian has asked to have address or other reported personal information protected from the other parent, claiming risk of physical or emotional harm to the requestor or the child, the CSED will honor the request.

Exception from Immediate Income Withholding. The CSED may except an obligor from immediate income withholding if it finds

- there is good cause not to require immediate withholding, or
- there is an acceptable alternative arrangement in place for the payment of support.

The finding can be made by the caseworker in the course of negotiating the support order, or by the Administrative Law Judge (ALJ) at hearing.

The process for obtaining an exception begins with the obligated parent. The original NOCS contains a provision requiring immediate income withholding. If the obligated parent disagrees with the provision, the parent may contact the CSED to request an exception.

The caseworker can recommend an exception for **good cause** if all of the following conditions are met:

(1) The obligor or obligee provides convincing evidence that implementation of immediate income withholding would not be in the best interests of the child.

EXAMPLE: There is evidence the obligor" s employer, despite the statute forbidding the practice, will fire, refuse to hire, or refuse to promote the obligor if the employer is required to comply with CSED withholding requirements. The resulting loss of income available for child support would not be in the best interests of the child.

(2) If support was previously ordered, there is proof of timely payment.

(3) No arrears are owing, and the obligor has paid in full any judgment listed in the NOCS.

The caseworker can recommend an exception based on an **alternative arrangement** if all of the following conditions are met:

(1) There is a written agreement for payment of support that is signed by the obligor and the obligee; or, there is an oral agreement between the obligor and obligee that the caseworker has heard directly stated by both.

(2) The agreement provides sufficient security to ensure compliance with the arrangement. Examples of possible security include bonds, prepayment of support (at

least one month ahead), military allotments, or other automatic draws on the obligor"s bank account or pay check.

(3) Support payments for amounts in the NOCS are made through the CSED.

(4) No arrears are owing, and the obligor has paid in full any judgment listed in the NOCS.

If the caseworker recommends exception and the supervisor approves, an amended NOCS is issued that includes the exception. A written determination is attached to the NOCS that describes the exception and the basis for it.

If the CSED denies a parent"s request for an exception (the caseworker declines to recommend an exception, or the supervisor does not approve a recommended exception), the obligated parent can request a hearing on the NOCS to contest the issue.

Time Frames for Establishing a Support Obligation. Two federal time frames apply to the procedures in this section:
(1) Within 90 calendar days of locating the obligor the CSED must serve notice of the establishment action.
(2) Within 6 months of serving the notice in time frame (1) on all obligated parents, the CSED must enter the support order or dismiss the action.

To ensure compliance with time frame (1) the CSED serves the notice for the support action at the same time as any notice of a paternity action.

The total time allowed in (1) and (2) includes any time used to establish paternity, negotiate support amounts, issue amended notices, schedule and hold a hearing, or obtain the signature of the ALJ.

PROCEDURES
Caseworker

1. **Initial Review.** Upon determining that conditions for establishing a support order apply, proceeds as follows:

    a. Determines whether the CSED has personal jurisdiction over the obligor as defined in 40-5-231 and 40-5-145, MCA. If not, initiates an interstate referral or proceeds as appropriate in section CS 250.1, Native American Jurisdiction.

    b. Determines whether either of the following exceptions for the parent obligee applies: if so, proceeds in this section against the obligor only, as if for a third-party case.

        (1) The parent obligee is under age 18.

(2) The CSED does not have jurisdiction over the parent obligee based on applicable factors in section CS 250.1, Native American Jurisdiction.

NOTE: Out-of-State Obligees. The CSED attempts to identify or obtain jurisdiction over an obligee in an incoming interstate case at the time of case opening; if that is not possible, the CSED does not proceed with the interstate establishment case against the obligor. (See POLICY, Jurisdiction Over Out-of-State Obligee.)

c. In an interstate responding case where the CSED has personal jurisdiction over the out-of-state parent obligee, adapts the procedures in the remainder of this section as necessary to provide due process for the parent while complying with all IV-D requirements for interstate case processing. Specifically,

- updates SEARCHS to list the parent, not the initiating state, as the obligee in the case; after the support obligation is established restores the original information;
- in step 9 serves the notice directly on the parent; if direct service is not successful, obtains service through the initiating state;
- in steps 19, 20, and 23, proceeds as for a Montana parent obligee to conduct the pre-hearing contact, exchange hearing exhibits, and ensure the notice of hearing and scheduling order is sent; adjusts these procedures as necessary if the CSED needs the assistance of the initiating state with the hearing; and
- at the completion of the establishment action notifies the initiating state according to regular interstate procedures.

d. Reviews available financial information for each obligated parent. Sources of information should include SEARCHS, the case application or referral, information on file from other actions, current wage publications, and any incidental information. If necessary and where practical, obtains additional information through informal contact with the parents or custodian.

e. At the caseworker" s option, requests financial information in advance of the formal notice process (steps 2 through 6) by preparing and sending to the obligee parent
- form CS-202.1A, Request for Information (10-day letter) asking the obligee to complete and return a Financial Affidavit (and to provide other information if necessary), or
- form CS-401.3H, Letter Requesting Financial Affidavits (also a 10-day letter) asking the obligee to complete and return two Financial Affidavits--one with information about the obligee and the other with information about the obligor.

2. **Guidelines Calculation.** Unless the TANF exception applies (see POLICY), performs a guidelines calculation as in section CS 404.1. Determines the support amount to be ordered based on the guidelines transfer payment and the associated breakdown for each child. Proceeds to step 5.

NOTE: Difference Due to Rounding. Where the amount in the support order will be a per-child amount (most cases), and the total of the per-child amounts for all the children differs from the total transfer payment listed in Worksheet A because of rounding, the CSED establishes the support obligation at the total of the per-child amounts. This aggregate amount is then used for all purposes in the child support case, including determining any judgment in step 6c(iii), and setting up accounts and ordering income withholding after the support order is entered.

3. **TANF Amount.** If the TANF exception applies, enters a SEARCHS case note explaining why a guidelines calculation was not possible. Determines the obligor"s monthly child support obligation per child as follows:
   a. Under the Temporary Assistance for Needy Families (TANF) program identifies the public assistance grant amount corresponding to the number of children in this action (see the bulletin immediately preceding this section for the latest amounts).
   b. Divides the grant amount by the number of children to get the per-child obligation.

4. **First-Payment Date.** [deleted--the caseworker no longer sets a date-certain for the obligor's first payment; language in the NOCS states that child support is effective and enforceable on the date the notice is served on the last obligated parent, unless a hearing is requested.]

5. **Commencement Date**. Determines the commencement date of the obligation as in steps 5a and 5b below. (Note that identification of a commencement month also determines the beginning of any judgment period to be included in the support order.)

   a. Initially sets the commencement date at the first day of the appropriate month in 5a(i) through 5a(iv) below.

      i. The month in which a child in this action was born, if paternity was established by action of the CSED or a Montana court.
      ii. The month in which the parents were legally separated.
      iii. The month in which some other event occurred that is significant to the accrual of a support obligation (for example, public assistance benefits began, or the non-public assistance case opened, or the Notice and Order Concerning Support was first issued prior to failure of service); the significant event must be after the date of birth or separation.
      iv. The month in which the NOCS is issued.

      NOTE: The commencement month in 5a(iv) above may turn out to be the first month of the current support account on SEARCHS, or the first month of an arrears judgment, depending on when the ALJ signs the order. (Receipt of the ALJ's signature allows the caseworker to set up the current support account. If the order is signed and accounts set up in the same month as the NOCS is issued, current support will begin with the commencement month, and the judgement will be $0. If the order is signed or accounts are set up in a later month, there will be a judgment for the months before current support begins.)

Commencement dates other than those identified above should be discussed with the supervisor or CSED staff attorney before implementation.

b. Adjusts the month of the commencement date as necessary to comply with the following restrictions:

(1) The period from the commencement date to the present must include no unreasonable lapses in the CSED"s attention to case. (The period may include moratoriums specifically set by CSED policy.)

(2) The judgment period created by the commencement date must not include more than 24 months in which rights to support were assigned to the state.

c. Identifies any support payments the obligor can prove having made to the obligee for the months from commencement of the obligation.

6. **Preparing the First NOCS.** Prepares form CS-401.3A, Notice and Order Concerning Support (NOCS), as in steps 6a through 6e below.

a. Enters the amount of the obligor"s monthly child support obligation from step 2 or step 3. This amount should be entered in the per-child field unless step 6c(v) non-per child language applies.

b. Enters the commencement month determined in step 5.

c. Selects options for the NOCS document according to the facts of the case:
   i. Selects third-party language if the obligee is not a parent.
   (Note that if support amounts are being established on behalf of both a parent obligee and a non-parent (third-party) obligee, two separate NOCS documents are required: one (standard language) for the amount owed the parent obligee, and the other (third-party language) for the amount owed the non-parent obligee.)
   ii. For each obligated parent, selects the option to send a Financial Affidavit if an affidavit is not on file. This selection applies even if the amounts in the notice are guidelines amounts, or even if receipt of the obligee"s Financial Affidavit is likely in the near future based on a step-1e request.
   iii. [deleted--caseworker no longer selects a judgment and enters an amount; see step 5]
   iv. Selects consent language only if Financial Affidavits have been received for all obligated parents; amounts in the notice must be based on the guidelines.
   v. Selects non-per child language if the amounts in the guidelines worksheet are not the same, or are not owed by the same parent, for each child. Enters the total monthly payment for all the children in the not-per-child field.
   vi. Selects non-guidelines language if the amounts in the notice are not based on the guidelines.

vii. Selects temporary obligation language only in conjunction with the procedures in section CS 401.4.
viii. Selects the judgment for genetic testing fees if applicable; adjusts the amounts if necessary.
ix. Does not select the income withholding exception. This option is available only under specific conditions in an amended NOCS (see step 15).
x. Does not select the amended notice; this option is available only for an amended NOCS (see step 15).

d. Adjusts the language of the support order where applicable to
   - reflect the requirements of section CS 404.1 for rebutted presumptions, variances, and anticipated changes in circumstance;
   - state the amount identified in step 5c for payments already received. Specifically, the statement containing the commencement month should be adjusted to read as follows (added language in italics),

     "In addition the Obligor shall pay child support for the months from [commencement month] through the month in which the Administrative Law Judge signs the ENTRY OF ORDER, at the amount per month stated in this paragraph, *less $[5c amount] for payments already received.*"

   - accommodate other special facts of the case, with the advice of the staff attorney.

   NOTE: Previously Established Medical Support. In rare cases medical support provisions contained in the NOCS may duplicate the medical support obligation already established for a particular parent-child pair. It is not necessary to adjust the support order in this situation; standard language in the NOCS provides that any duplication of medical support caused by entry of the proposed support order does not increase the parent"s medical obligation with respect to the duplicated provision.

e. If there is a domestic violence indicator on SEARCHS for the NOCS subcase (obligee and obligor), checks to make sure the certificate of mailing does not include an address for the person who is listed as the alleged victim.

7. **NOCS Package.** Generates and signs the original NOCS, and prepares a NOCS package for each obligated parent comprising
   - a copy of the signed NOCS,
   - copies of any guidelines worksheets prepared in step 2, attached to the NOCS,
   - if applicable, form CS-404.6A, Financial Affidavit, and
   - form CS-401.3M, Child Health Insurance Premiums.

   Makes an extra copy of the stuffers generated with the NOCS; retains for later use one set of stuffers, the original signed NOCS, and copies of any guidelines worksheets.

In a third-party case sends a copy of the NOCS--with the hearing request removed--and any guidelines worksheets to the obligee by regular mail.

8. **Paternity Coordination.** If the obligor"s paternity is established or not at issue, proceeds with service on the obligated parents as in step 9. Note that if paternity has been established by presumption via Paternity Acknowledgment signed within the last 60 days, the presumption will become irrebuttable upon entry of the support order.

   If the obligor"s paternity is not established, for each alleged father combines service of the NOCS package in step 9 with service of the NPR in section CS 605.2 or 605.3, and coordinates resolution as appropriate. In multiple-allegation cases serves multiple NOCS packages on the mother obligee.

   If the obligor is the mother, proceeds with establishment of a support obligation against the mother as for a third-party case.

9. **Service and Response Time.** For each obligated parent, serves the NOCS package and monitors for response as in (1), (2), or (3) below. Upon obtaining successful service proceeds to step 11.
   (1) Sends the package by certified mail, return receipt requested, restricted delivery. Monitors for response within 3 mailing days plus 20 calendar days after mailing, or 20 days after the date the parent signs the return receipt, whichever allows for later response.
   (2) Arranges for personal service of the package through the sheriff or a civil process server. Monitors for response within 20 calendar days of the date on the return of service.
   (3) Prepares form CS-405.1, Notice and Acknowledgment of Receipt of Administrative Notice. Encloses with the NOCS package the original and one copy of the Acknowledgment, along with a self-addressed stamped envelope; sends the package by regular mail. If a signed Acknowledgment is not returned within 20 calendar days after the mailing date, immediately arranges for service by sheriff or civil process server in (2) above.

10. **Failed Service on a Parent.** If service is obtained on the obligor, but cannot be obtained by any method on the parent obligee, then
    - if there will be a public assistance debt, regardless of whether a new obligee opens a case, amends the NOCS to the third-party version as in step 15, and informs the public assistance agency.
    - if there will not be a public assistance debt, begins closure of the obligee"s non-public assistance case; at the caseworker"s option depending on the facts of the case, either
      - amends the NOCS to the third-party version as in step 15, and finalizes the support action before closure, or
      - dismisses the notice as in step 11 at the time of closure.

If service cannot be obtained on the obligor, takes the necessary steps to locate the obligor, including but not limited to monitoring automatic interfaces. If within one year from the date the NOCS is issued the obligor is

- located, arranges for service of the original NOCS.
- not located, dismisses the notice as in step 11. When the obligor is located, issues a new NOCS for the same payment amounts and the same commencement date as in the original NOCS.

(The one-year period for serving the original NOCS may be adjusted at the region"s option.)

11. **Dismissing (and Not Dismissing) the Notice.** If in response to service of the NOCS an obligated parent timely contacts the CSED and proves that either

- no support obligation exists, or
- a support order for the child support obligation already exists,

prepares form CS-401.3F, Motion and Order to Dismiss Administrative Notice, and forwards the motion to the Office of the Administrative Law Judge (OALJ) for execution and notification of the parties.

If an obligated parent proves a prior support action is pending in district court, amends the notice to include "temporary" language (a NOCS selection on SEARCHS) and follows the procedures in section CS 401.4.

If an obligated parent claims nonpaternity (and CSED records show paternity has been established or was never at issue), explains the CSED will proceed with establishment of the support obligation; the parent may request a hearing on the NOCS and contest the existence of a paternity presumption or order at that time, and/or may petition the district court for relief on the paternity issue.

If the obligee changes after the NOCS is served on at least one obligated parent, maintains the NOCS action for the original obligor and obligee, except that

- if the original obligee is a parent and cannot be served, amends or dismisses the notice according to the instructions in step 10.
- if the new obligee is parent (the original obligee was a third party), at the caseworker"s discretion dismisses the notice and issues a new NOCS for two obligated parents.

12. **Medical Support Enforcement.** If in response to service of the NOCS the obligor contacts the CSED objecting to or questioning the proposed health insurance requirement, explains how the requirement will be enforced. If appropriate, performs a preliminary medical hardship determination using information available from the case file or provided by the obligor. Informs the obligor of the tentative results; explains the results from a final determination (when the case actually reaches enforcement) may be different, as personal information is verified or corrected.

13. **Resolving the NOCS.** Proceeds in 13a through 13c below, as applicable.

a. **No hearing request; amendment required.** If a hearing is not timely requested by any obligated parent, and
   - an obligated parent or other person timely provides information that changes the amounts noticed, or
   - the parties timely contact the CSED and prove that conditions for the exception to income withholding apply (see POLICY), proceeds to step 15.

b. **No hearing request, no amendment.** If a hearing is not timely requested by any obligated parent and no information is received to change the amounts or terms noticed, immediately proceeds to step 17.

c. **Hearing request.** If any obligated parent timely requests a hearing, proceeds to step 19.

14. **Notification Requirements.** [deleted--CSED policy no longer requires additional notification in the case where amounts in the NOCS will not change despite the submission of or requirements for Financial Affidavits]

15. **Preparing and Issuing an Amended NOCS.** If necessary to update the noticed terms or amounts, to amend to a third-party or temporary version, or to correct an error in case information, prepares an amended NOCS as in step 6, and according to the special instructions in steps 15a through 15e below. Does not amend the NOCS solely to add a judgment for genetic testing fees.

(If the above changes apply but the original NOCS has not been served on any obligated parent, recalls the original notice and begins again at step 1.)

a. [deleted--first-payment date no longer entered by caseworker; see step 4]

b. Does not change the commencement date determined for the original NOCS.

c. Selects the income withholding exception (good-cause or alternative-arrangement type) at an obligated parent's request if

   - the conditions for good cause or alternative arrangements described in POLICY apply,
   - the exception is approved by the supervisor, and
   - (for alternative arrangement exceptions) consent language is also selected (all obligated parents have submitted Financial Affidavits).

Collects the support amount due for the period from the commencement month (step 5) through the month in which the amended NOCS is issued. Upon payment adjusts the statement in the NOCS containing the commencement date to show the amount paid.

Prepares and attaches form CS-401.3E, Exception to Income Withholding.

d. In the case of conversion to a third-party case because of failed service on a parent obligee, selects third-party language, retaining the same obligee in the heading as in the original NOCS. (SEARCHS will correctly convert the format of the heading to the third-party version, but the caseworker may be required to adjust the document off-SEARCHS to ensure the original parent obligee is retained as "obligee.")

   If the parent obligee was successfully served with the original NOCS but now cannot be located, does not amend the notice to the third-party version, but proceeds otherwise as in step 10.

e. Selects amended notice language in all cases.

Sends the amended notice package to the obligated parents by regular mail; enters a case note for the type of service. Monitors for response within three mailing days plus 20 calendar days after mailing. In a third-party case also sends a copy of the amended NOCS--with the hearing request removed--and any guidelines worksheets to the obligee by regular mail.

16. **Resolving an Amended NOCS.** If no hearing is requested by any obligated parent (and no hearing is pending on the original NOCS), resolves the notice as in steps 13 and 14. Additional notices beyond the first NOCS and one amended NOCS are generally not appropriate, unless one or both Financial Affidavits are produced in response to the amended NOCS.

    If a hearing was requested on the first NOCS and the requestor has not withdrawn the request or consented to the amended NOCS, at the discretion of the caseworker contacts the obligated parents; informs the parents the hearing will proceed and explains the possible consequences as in NOTE 2, step 24.

17. **Preparing the Support Order.** Where no obligated parent has timely requested a hearing, prepares the appropriate support order and assembles the package as in steps 17a through 17d below.

    a. **Consent Only.** If all obligated parents have returned signed consents,
       - in a two-obligation case prepares form CS-401.3B, Entry of Support Order, and attaches both NOCS documents containing the parents" signatures; adds the three documents to the package in step 17d.
       - in a third-party case, adds the NOCS document containing the obligor"s signature to the package in step 17d.

    b. **Default Only.** If no obligated parent has returned a signed consent, retrieves the original NOCS from the case file and completes the certificate of service and response; adds the NOCS to the package in step 17d.

c. **Consent and Default.** If one obligated parent has returned a signed consent, and one obligated parent has not, uses the document containing the original signature of the consenting parent to complete the certificate of service and response; adds the document to the package in step 17d.

d. **Assembling the Package.** Assembles the support order package containing
  - the NOCS document(s) identified for the package in step 17a, 17b, or 17c above,
  - any guidelines worksheets sent with the notice (attached to the NOCS),
  - any form CS-401.3E, Exception to Income Withholding sent with the notice (attached to the NOCS), and
  - stuffers (retrieved from the case file).

  Submits the package to the supervisor for expedited review; upon approval, immediately sends the original package to the OALJ, retaining a copy for the case file. Enters a SEARCHS case note.

18. **Entry of the Support Order.** Following submission of the support order package in step 17 or participation in the hearing in step 21, monitors for receipt of a copy of the final order signed by the ALJ (see step 27).

    Immediately upon receipt of the final order takes action to
    - review the terms of the support order;
    - update the SEARCHS SOS and SOD screens;
    - set up the applicable accounts on SEARCHS; and
    - begin enforcement by any appropriate means.

    Enforcement methods include income withholding, enrollment for medical support, and various remedies for enforcement of arrears. In the case of income withholding and medical enrollment, the time frames for initiating enforcement in sections 510.1 (or 510.3) and 520.7, respectively, also apply.

    Accounts required for enforcement include the current support account, and accounts for any judgment period created by the support order. (The judgment period includes the months from the commencement month through the month before the accounts are set up. If the support order is signed and accounts are set up in the commencement month, there is no judgment.)

    NOTE 1: Oral "Bench Ruling" Not a Final Order. For purposes of the CSED's authority to enforce support, a bench ruling issued in step 25 takes the place of a **proposed** decision and order only. The caseworker cannot proceed to update SEARCHS or enforce the decision until a written **final** order is obtained.

    NOTE 2: Expediting Support Enforcement. To comply with the intent of both federal regulations and state law concerning system data reliability and immediate

effectiveness of support, it is essential that SEARCHS current support accounts be available for collection **immediately** upon
(1) completion of service of the NOCS or amended NOCS on all obligated parents and
(2) receipt of the final support order signed by the ALJ.
For this reason the caseworker must take every opportunity to expedite case processing from the day the service response period expires through the day enforcement begins. This includes efficient preparation and submission of the NOCS package to the OALJ, as well as close monitoring for return of the signed final order from the OALJ.

a. If the support order is for TANF (non-guidelines) amounts, monitors for receipt of information sufficient to determine guidelines amounts; upon receipt proceeds with a replacement action in section CS 401.5.

b. If contacted by a person dissatisfied with the support order, explains the applicable remedy(ies) below, and takes described action at the request of the contacting party:
   (1) Judicial review (for a support order entered as the result of a hearing, upon timely request to the district court). Sends a pro-se judicial review packet and enters a SEARCHS case note; continues enforcement regardless of any petition for judicial review, unless the Administrative Law Judge (ALJ) or the district court stays the CSED order.
   (2) Set-aside (for an order entered by default, upon written motion to the OALJ showing good cause for the default). Provides the address of the OALJ.
   (3) Replacement (for a non-guidelines order). Proceeds as described in section CS 401.5.
   (4) Review for modification (for a guidelines order, upon a showing of significant change of circumstances or that 36 months has passed since the order was entered). Prepares and sends form CS-408.3A, Request for Review, and follows procedures in section CS 408.3, Review and Modification of Support Order.

c. If other children are added to the case, follows the procedures in section CS 401.6, Subsequent Notice and Order Concerning Support. END OF PROCESS

19. **Immediate Steps Upon Receiving a Hearing Request.** If an obligated parent requests a hearing, proceeds as applicable in steps 19a through 19d below. If the hearing request is received first in the regional office, immediately faxes the request (and mails the original) to the OALJ; enters a SEARCHS case note for the request received and forwarded.

   a. **Responding to the OALJ.** Upon receipt of a copy of the hearing request from the OALJ, within 3 working days informs the OALJ of any dates the caseworker will be unable to attend a hearing. In a case involving two obligated parents, if the CSED has not yet obtained service on the non-requesting parent, monitors for service and, if applicable, proceeds in step 20d.

b. **Contacting the Obligated Parents.** As soon as possible (and without waiting to receive the notice and order for hearing from the OALJ), researches the issues raised in the hearing request and contacts all obligated parents. In cases with two obligated parents, the contacts may be combined in a single interview at the discretion of the caseworker.

In the course of the discussion with each parent identifies and attempts to resolve any issues cited in the hearing request or raised separately. Specifically, conducts the interview(s) as outlined in substeps 19b(i) and 19b(ii) below, regardless of which parent requested the hearing.

i. **Defenses.** If a parent claims an absolute or affirmative defense, elicits the parent"s reasons or supporting facts and proceeds in this substep **before** proceeding to substep 19b(ii).

A. If the defense is proved to the satisfaction of the caseworker, dismisses the action as in step 11; includes in the motion to dismiss a request to vacate the hearing as well.

B. If the defense is not proved, or if further information will be required to determine the validity, proceeds to step 19b(ii). Requests the parent provide any information still needed as soon as possible. Consults with the CSED staff attorney on all questionable cases.

NOTE 1: Absolute Defenses Defined. "Absolute defenses" are defenses that need no further proof and, if true, prevent the CSED from proceeding with the NOCS action. Absolute defenses may include (1) the CSED served the NOCS on the person by mistake, intending to serve another person, or (2) there is a current court order or irrebuttable presumption establishing another man as the father, or (3) the CSED does not have subject matter jurisdiction to establish support.

NOTE 2: Affirmative Defenses Defined. "Affirmative" defenses are defenses that, if not raised before the hearing, cannot be raised at a later time. Affirmative defenses to the NOCS action may include (1) the custodian has waived the right to receive child support, (2) a court has declared any of the children emancipated, (3) a support order for the financial support of the children already exists against the obligor, or (4) the CSED lacks personal jurisdiction over the parent to establish a support order.

ii. **Contested Elements.** Using the CSED"s pre-hearing NOCS Interview Guide, reviews the elements of the case with the parent. Identifies any elements the parent intends to contest at hearing. Where necessary explains specific

CSED procedures or calculations, confirms the CSED"s authority to act, and gives or obtains any other information relating to issues raised.

Note that in cases involving two obligated parents, either parent can contest any element of the case, regardless of whether the element applies to the contesting parent or the other parent. For example, the obligor can contest the CSED's jurisdiction over the obligee. In identifying elements that may be contested, the caseworker must be sure to specifically address all possible combinations.

c. **Results of Contact.** Upon completion of the required interview(s), takes appropriate action in steps 19c(i) through 19c(iii) below.

i. **Withdrawal.** If the requesting parent is satisfied with the explanation and no longer wishes to contest the notice, explains the procedures for withdrawing the hearing request or (if applicable) consenting to the notice. Emphasizes any withdrawal must be in writing and signed by the requesting parent; if the request is not properly withdrawn the hearing will proceed.

If applicable, explains the rights of the non-requesting parent as in step 24. Proceeds to step 13 or step 20, as applicable.

ii. **Amended Notice.** If a contacted parent provides information that would change the noticed terms of the obligations, proceeds in step 15.

iii. **Hearing Checklist.** If a contacted parent maintains or timely initiates a request for hearing, prepares form CS-401.3J, Hearing Checklist (Notice and Order Concerning Support), documenting the contact(s) and results, and specifying any issues the caseworker expects to be contested at hearing. If both parents were contacted, enters the information for both parents on a single copy of the form. Before the date of the hearing, sends a copy of the form to each obligated parent and the OALJ, maintaining a copy for the case file.

d. **Failed Attempts to Contact.** If unable to contact an obligated parent before the hearing date despite repeated attempts, documents the attempts on the Hearing Checklist and sends copies of the completed checklist to the parties and the OALJ as in step 19c above.

20. **Hearing Preparation.** Prepares evidence and arranges testimony in 20a through 20d below.

a. **Exhibits and Witnesses.** Identifies and arranges for the appearance of witnesses. Prepares the state"s exhibits and form CS-405.11A, Witness and Exhibit List, and makes the necessary copies. IMPORTANT: The Witness and Exhibit List must include addresses and telephone numbers for all of the witnesses. If the CSED is aware that a witness or a child in the witness's custody is an alleged victim of domestic violence related to the NOCS subcase, replaces the address and telephone number for the witness with the words, "in care of the Child Support Enforcement Division."

Mails the list and exhibits directly to each obligated parent (copies) and the OALJ (originals), to be received at least five working days before the hearing date; retains one copy for the case file. Upon receipt of a notice and order for hearing from the OALJ, forwards copies of the notice to the witnesses as necessary.

b. **Caseworker Testimony.** Prepares caseworker testimony under the general direction of the CSED staff attorney. The testimony should address the elements of the prima facie case including, at a minimum, the CSED"s authority to proceed, the lack of any existing financial support order, the existence of a paternity presumption or order, the service of the administrative notice, the CSED"s jurisdiction over the subject matter, the existence of an obligation of support, and the obligated parents' ability to support the children. (Note that the caseworker must prepare the complete testimony regardless of any expectation that a party will stipulate to one or more of these elements at the hearing.)

IMPORTANT: For purposes of evidence of paternity, the caseworker should prepare testimony stating by what method paternity was established or presumed, rather than introducing actual paternity documents, which may be subject to strict confidentiality regulations.

c. **Judgment for Arrears.** Determines the arrears accrued from the commencement month through the hearing month; prepares a request for a judgment, to be presented at the hearing.

d. **Third-Party Cases.** Where applicable, prepares a request asking the ALJ to take official notice of the methods described in section CS 404.3 for adapting the guidelines in third-party cases.

e. **Continuances or Delays.** Except in unusual situations or as noted below, does not request a continuance (rescheduling) of the hearing, or a delay in submitting the exhibits, once the respective dates are set. If a continuance does apply, prepares form CS-405.7A, Motion for Continuance, obtains the approval of the supervisor, and sends the form to the OALJ; monitors for the rescheduled date.

NOTE: Continuance for Service on a Party. In a case where the hearing date is approaching and an obligated parent has not yet been served, but efforts to serve the parent are continuing and are likely to be successful, CSED policy allows for continuance of the hearing as needed to allow a reasonable time between service of notice and hearing.

21. **Hearing Participation.** Participates in the hearing as a witness; presents any special requests prepared in step 20. Provides prepared testimony as needed to prove the elements of the case; proof is not needed where the parties stipulate to an element during the status conference (step 25). If appropriate, performs "live" guidelines calculations during the telephone hearing concurrently with the calculations performed by the ALJ.

    Except in unusual situations with prior approval of the supervisor, does not request the hearing record be held open. In special situations involving unfamiliar points of law, requests the ALJ set a briefing schedule as needed (due dates for briefs will not be subject to the CSED time frames for the hearing process).

    Upon receiving a copy of the proposed decision and order from the OALJ (step 26), reviews the proposed order carefully for accuracy and general conformance with CSED practices. Specifically,
    - checks the judgment amount and months (these need not be the same as in the NOCS); and
    - checks the first payment date (this should be set at the first of the month following the ALJ's signature on the final order).

    If the above or any other elements of the proposed order are inconsistent with CSED data reliability requirements or with the evidence and discussions of the hearing, consults the CSED staff attorney concerning a possible motion to review. Upon resolution of the motion, or if no motion is needed, proceeds to step 18.

OALJ

22. **Processing Non-Hearing Orders.** Upon receipt of a support order package prepared by the caseworker in step 17, obtains the signature of the ALJ, enters a SEARCHS case note for the consent or default order signed, and proceeds to step 27.

    NOTE: Expedited Processing Required. CSED policy requires that processing in this step and step 27 be completed as quickly as possible--either on the day the package is received or, at the latest, on the next business day (certain exceptions for corrections or extraordinary circumstances may apply).

23. **Hearing Scheduling.** Upon receipt of a timely request for hearing from an obligated parent, immediately sends a copy of the request to the caseworker to identify any unavailable dates. In a two-obligation case also prepares and sends to the non-requesting parent a notice of requested hearing asking the parent to notify the OALJ within 10 days of the dates and times the parent will be available for the hearing.

    Schedules the hearing and sets any appropriate due dates. Prepares, and obtains the signature of the ALJ on, a notice of hearing and scheduling order. The notice and order must include the hearing date, hearing instructions, and due dates set by the OALJ for witness and exhibits lists, exhibits, and requests for discovery. Mails copies to the caseworker, all obligated parents, and any third-party obligee; retains the original in the hearing file.

24. **Vacating the Hearing.** If before the hearing is held a requestor withdraws the request in writing, proceeds in 24a, 24b, or 24c below. Sends copies of any order vacating the hearing in this step to the obligated parents, any third-party obligee, and the caseworker, retaining the original in the hearing file.

  a. In a third-party case, prepares, obtains the ALJ's signature on, and issues an order vacating the hearing.

  b. In a two-obligation case in which the other parent has also requested a hearing, deems the request to withdraw denied, and proceeds with the hearing. (The parent withdrawing the request does not receive written notification of the deemed denial; rather, the original notice of hearing and scheduling order continues to apply.)

  c. In a two-obligation case in which the other parent has not requested a hearing (including cases in which the non-requesting parent has signed a consent), prepares, obtains the signature of the ALJ on, and sends to the other parent an order on the hearing request. The order notifies the other parent that the request for hearing has been withdrawn, and that the ALJ will vacate the hearing unless the other parent requests a hearing in writing within 10 days. (If the hearing date is less than 10 days away, the OALJ continues the hearing without date while awaiting the parent's response.)

  If the other parent timely requests a hearing, proceeds as in 24b above, rescheduling the hearing date if necessary. If the other parent does not timely request a hearing, issues an order vacating the hearing as in 24a above.

  EXCEPTION: If the parent requesting the hearing withdraws the request three days or fewer before the hearing date, the OALJ will proceed with the hearing as ordered. At the hearing the ALJ will ask the other parent if he or she wants to request a hearing. If the other parent requests a hearing, the hearing will proceed; if not, the ALJ will orally vacate the hearing, and the OALJ will issue a written order as in 24a. (NOTE: If the timing in this EXCEPTION applies, the non-requesting parent may, before the hearing date, submit a written statement declining the new opportunity to request a hearing. On receipt of the statement the OALJ will inform the requesting parent and issue an order vacating the hearing as in 24a.)

NOTE 1: Consent Signed by Parent Requesting Hearing. If the parent requesting the hearing later signs the Consent to Support contained in the NOCS,

- in a third-party case the CSED deems the hearing request withdrawn and vacates the hearing as in 24a above.
- in a two-obligation case the CSED deems the hearing request withdrawn and vacates the hearing only if the other parent also signs a consent; otherwise, the OALJ proceeds as in 24b or 24c above.

NOTE 2: Amended NOCS Issued After Request for Hearing. If a parent requests a hearing in response to a NOCS and the NOCS is then amended, the request for hearing automatically applies to the amended NOCS. The hearing is not vacated unless

- all obligated parents sign the Consent to Support contained in the amended NOCS; or
- the requesting parent withdraws the request or signs a consent to the amended NOCS, **and** the conditions for vacating in 24a, 24c, or NOTE 1 above apply.

At the hearing the ALJ will determine the support order based on the evidence presented. If the evidence refutes any of the terms of the amended NOCS, the final order entered in the action will be different from the order in the amended notice.

Administrative Law Judge (ALJ)

25. **Conduct of the Hearing.** Conducts the hearing and determines the support obligations as in ARM 37.62.941 through ARM 37.62.945, and 40-5-226, MCA. If necessary, limits the hearing to issues submitted in writing by the obligated parents prior to the hearing.

Before taking formal evidence and testimony, conducts a status conference to identify the specific issues being contested. As appropriate, obtains stipulations from the obligated parents to uncontested issues.

NOTE 1: Bench Ruling. Following the close of testimony and any closing statements of the parties, the ALJ may, at his or her discretion, issue a bench ruling on the record, orally announcing the proposed decision and order. The bench ruling is in lieu of a written order, and states that any motion for review of the proposed decision and order must be filed within 20 days after the announcement of the bench ruling. The ALJ enters a SEARCHS case note for a bench ruling issued, and responds to any motion to review or failure to file a motion to review as in step 26a or 26b.

NOTE 2: Failure to Appear. If the parent who requested the hearing fails to appear, the ALJ proceeds according to the number of obligated parents in the case. In a third-party case (one obligated parent), upon a showing of valid service the ALJ may enter a default decision and order declaring the amount stated in the notice to be final. In a case involving two obligated parents the ALJ will proceed with the hearing and will determine the support obligations based on the notice, information available to the CSED, and evidence provided at the hearing by the appearing parties.

TERMINOLOGY NOTE: In steps 26 through 28 below the terms **"final decision and order"** and **"final order"** are used as in ARM 37.62.901 through ARM 37.62.965 to mean a determination that exhausts CSED administrative remedies for the action in question. The term does not necessarily imply the availability of judicial review. For example, a final decision and order that establishes a temporary support obligation (see section CS 401.4) is not subject to judicial review.

26. **Proposed Decision and Order; Final Decision and Order.** Following the close of the hearing, issues and signs a proposed decision and order establishing the support obligations.

    a. If within 20 days after service of the proposed decision and order in step 27, an obligated parent files a motion to review the order setting out any of the grounds for review in ARM 37.62.951, proceeds to consider the motion. Affirms, corrects, amends, or modifies the proposed order. Issues a final decision and order setting the first payment date as described above, or enacts the proposed decision and order as a final order.

    b. If no obligated parent files a motion as in step 26a above, enacts the proposed decision and order as a final CSED order.

    Signs the final decision and order in 26a or 26b above, ensuring the order is issued or enacted within 60 days after the close of the hearing; enters a SEARCHS case note for the final decision and order signed.

OALJ

27. **Processing Proposed and Final Decisions and Orders.** For any consent or default order signed in step 22, or any proposed or final decision and order signed in step 26, sends copies to the caseworker, the obligated parents, and any third-party obligee by regular mail; enters a SEARCHS case note for the order mailed, and retains the original for the file.

    In the case of a proposed decision and order, monitors for receipt of a motion to review within 3 mailing days plus 20 calendar days after the date the proposed decision and order is mailed. Forwards the motion to review to the ALJ for a determination under step 26a.

28. **Abstracting and Monitoring Final Orders.** Abstracts a final order processed in step 27 to the appropriate district court, enters a SEARCHS case note, and mails copies of the filed abstract to the people who received copies of the final order.

    For a final decision and order from a hearing, monitors for receipt of a petition for judicial review. EXCEPTION: Judicial review is not available for a final order establishing a temporary support obligation.

Establishment of Temporary Support

SUPERSEDES

CS 401.4, Establishment of Temporary Support Obligation, July 1, 1997

REFERENCES

MCA "" 40-5-225 through 40-5-227

POLICY

The CSED may establish a temporary support obligation against a parent in a CSED case if

- a support action is pending in district court and a temporary or permanent support obligation has not been ordered, or
- a paternity action is pending and there is clear and convincing evidence of paternity based on genetic tests or other evidence.

The process for establishing a temporary support obligation is largely the same as the process for establishing a support obligation under section CS 401.3. Procedures in this section identify points at which the two processes diverge, and give the required actions at those points. The main procedural differences are as follows:

(1) The prescribed notice period is 10 working days (instead of 20 calendar days).
(2) The caseworker is required to determine whether an applicable action is pending in district court, and to monitor the action and dismiss any unresolved CSED notice when the court order is entered.
(3) An obligated parent may request a hearing to show that a temporary support obligation is inappropriate under the circumstances.

The temporary support order is no less effective than the support order entered in section CS 401.3, and is enforced in the same manner. It terminates automatically upon entry of a final order by the district court. If the court order is retroactive, amounts paid under the CSED temporary order are credited against the final obligation. If the district court never enters an order, the temporary order continues indefinitely until terminated by operation of law.

PROCEDURES

Caseworker

1. Upon determining that conditions in section CS 401.3 or 401.6 for establishing a support order apply, checks the application, referral, or other case information for indicators that a support or paternity action may be pending in a Montana district court. Possible indicators, in addition to direct statements, may include references to legal actions or parents" attorneys, or the absence of a divorce decree or presumption of paternity. If no indicators are found, follows the procedures in section CS 401.3 or 401.6 for establishment of a permanent support obligation.

    a. If indicators of a support action are found, contacts the clerk of court to determine whether a support action has been filed and, if so, whether the action is still pending; if necessary also contacts the attorneys in the case.

i. If contacts confirm a support action is pending, enters a SEARCHS case note for the pending action and follows the procedures in this section to establish an order for temporary support. Simultaneously proceeds in step 2.

CAUTION: If the pending court action is for an "additional" child under the procedures of section CS 401.6, Subsequent Notice and Order Concerning Support, consults with the CSED staff attorney before proceeding in this section. Generally the CSED does not pursue temporary establishment for additional children; exceptional situations are described in section 401.6. If temporary establishment for an additional child is appropriate, proceeds in this section, referring to section 401.6 (instead of 401.3) as applicable.

ii. If a pending action is not confirmed, follows the procedures in section CS 401.3 or 401.6 for establishment of a permanent support obligation.

b. If indicators of a paternity action are found, consults with the CSED staff attorney to identify the action and to determine
- whether further CSED involvement in the case is appropriate, and
- whether clear and convincing evidence of paternity exists.

If so, works with the staff attorney to adapt forms and procedures in this section as necessary. If a pending paternity action is not confirmed, proceeds to sections CS 602.1 and CS 401.3 or 401.6 for establishment of paternity and a permanent support obligation.

2. Where appropriate, consults with the CSED staff attorney on the feasibility of entering the district court action under authority of MCA 40-5-202. The CSED may wish to enter the action as an independent party to ensure the court order contains the guidelines amounts, medical support, and income withholding provisions required in Title 40, Chapter 5.

3. Performs the pre-notice reviews, determines the support payments and judgment amounts, and prepares the notice packages as in section CS 401.3. In preparing form CS-401.3A, selects the temporary obligation language to create the Notice and Order Concerning Temporary Support (TNOCS).

4. Arranges for service on the obligated parents as in section CS 401.3; monitors for response
   - to service by certified mail, within 3 mailing days plus 10 working days after mailing, or 10 working days after the date the parent signs the return receipt, whichever allows for a later response.
   - to service by personal process server, within 10 working days after the date on the return of service.
   - to waiver of service, within a reasonable time (as in CS 401.3).

   In case of failed service proceeds as in section CS 401.3.

5. If a support order is entered by the district court at any time before a temporary order is entered in these PROCEDURES, dismisses the notice as in section CS 401.3. Other conditions in CS 401.3 for dismissing the notice also apply.

6. Resolves the TNOCS as in section CS 401.3; "notification requirements" are not mandatory. If appropriate, issues an amended TNOCS, or prepares, submits, and processes a temporary support order based on the obligated parents' default or consent as in CS 401.3.

7. If a hearing on the TNOCS is requested, responds to the OALJ, contacts the obligated parents, completes and sends the Hearing Checklist and the Witness and Exhibit List, and prepares for and participates in the hearing as in CS 401.3. In addition to the elements of the prima facie case listed in CS 401.3, also prepares testimony that a support action is pending in district court, and no prior temporary support order exists.

OALJ AND ALJ

8. If a hearing is requested, processes the request as in section CS 401.3, including scheduling, notice and other documents, hearing conduct, order entry, abstracting, and notification of parties. Files the abstract in the district court in which the support action is pending.

Caseworker

9. Upon entry of the CSED temporary support order, sets a tickler to check with the clerk of court for entry of the court order. When the court order is entered, obtains a copy and proceeds as in 9a through 9d below.

   a. Updates the SEARCHS SOD screen.

   b. Adjusts the SEARCHS accounts as necessary, beginning at the effective date of the court order. If the adjustment creates an overpayment, does not issue a refund, but processes the excess amount as in step 9d below.

   c. Modifies any enforcement actions as necessary to reflect the updated current support or debt.

   d. If the court order declares nonpaternity or that a periodic support obligation is not proper, adjusts the accounts according to the current CSED accounting policy for "no order" situations. (In this situation the obligee must refund to the obligor any improper amounts paid under the temporary support order.)

   No action to terminate the CSED temporary support order is necessary.

10. If the court order does not contain the medical support obligation required under MCA Title 40, Chapter 5, Part 8 (that is, an obligation equivalent to that in the temporary

support order--see section CS 520.3), updates the SEARCHS SOD screen to describe the medical aspects of the court order, and enforces the medical obligation according to the terms of the court order.

SUPERSEDES

CS 401.5, Motion and Order Replacing Support Order, June 1, 2000

REFERENCES

MCA §§40-5-225 through 40-5-227

POLICY

Replacement vs. Modification. The CSED adjusts amounts due under a support obligation by replacing or modifying the support order. Replacement is available only for CSED orders that are not based on the Montana Child Support Guidelines for all the children in the case. Orders containing "guidelines" amounts for all the children can be adjusted only by modification, according to the procedures in section CS 408.3. Because of the CSED"s transition from one-parent to two-parent establishment in 1997, certain CSED non-guidelines orders are not appropriate for replacement, but require modification to add the second parent" s obligations.

Types of Replacement, Criteria. There are three types of CSED replacement actions. Replacement procedures in this section, Motion and Order Replacing Support Order (MORSO), apply when the case meets the following criteria:

(1) The existing support order was entered by the CSED on or after July 1, 1997 (i.e., as the result of a Notice and Order Concerning Support under procedures in section CS 401.3).
(2) The amounts contained in the order were based on Temporary Assistance to Needy Families (TANF) benefit amounts, or other non-guidelines amounts described in MCA 40-5-226(7)(b).
(3) No children are being added to the order.

If the existing order was entered by a court or another state's IV-D agency, replacement is not available.

If the existing order was entered by the CSED before July 1, 1997 (i.e., as a result of a Notice of Financial Responsibility), replacement is accomplished through a Notice of Intent to Vacate (NOIV); procedures are available from the regional NOIV representative. The NOIV action replaces the support amount only; it cannot be used to change any other provisions of the order, or to add a child to the existing obligation.

If the CSED is seeking to establish support for an additional child in the case, then the replacement procedures in section CS 401.6, Subsequent Notice and Order Concerning Support, apply regardless of how the existing support amounts were determined or when the existing order was entered.

The following table shows which type of support adjustment is available for each combination of case facts. Note that the table applies to only CSED-issued support orders. Any change to a non-CSED order requires a modification.

Basis for Support Amount	Case Facts (CSED Orders)		
	No additional children, pre-7/97 order	No additional children, 7/97+ order	Adding a child
Guidelines	Modification	Modification	SNOCS*
Non-Guidelines	NOIV	MORSO*	

* Further criteria may apply (see sections 401.5 and 401.6); if a MORSO or SNOCS is not available, a modification or separate NOCS may be required.

PROCEDURES

Caseworker

1. After entry of a support order containing TANF amounts, proceeds as in steps 1a and 1b below.

   a. Upon receiving both (1) a request from an obligated parent for replacement of the order and (2) financial information sufficient to perform a guidelines calculation, proceeds to step 1b. (At the caseworker"s option, deems the parent"s request in (1) upon discovering the necessary financial information.)

   b. Determines whether replacement of the existing order is appropriate. Replacement applies only when both of the following conditions are met:
      (1) The existing order was entered according to procedures for the Notice and Order Concerning Support in section CS 401.3.
      (2) The existing order obligates any current parent obligee.

      If replacement is appropriate, proceeds to step 2. (In arrears-only cases, negotiates a lump-sum settlement wherever possible. In cases where there is an enforceable current support obligation, the obligor or obligee must apply for CSED services before the CSED can begin replacement procedures.)

      If replacement is not appropriate, proceeds in step 1c.

   c. Where replacement is not appropriate, provides an opportunity for review and modification of the order as follows:

      i. If an actual request was received in step 1a, informs the requestor that the order can be changed only by modification; proceeds to step 1c(iii).

ii. If the CSED deemed the request in step 1a, determines whether the case meets the criteria in section CS 408.3 for modification initiated by the CSED; if so, follows procedures in that section for initiating a review, and takes no further action in this section. If CSED-initiated review does not apply, contacts the parent and explains the order may be eligible for review and possible modification based on the new financial information; proceeds to step 1c(iii).

iii. If the requestor (or deemed requestor) wishes to proceed, prepares and sends form CS-408.3A, Request for Review, and follows procedures in section CS 408.3, Review and Modification of Support Order. Takes no further action in this section.

2. Determines the amounts to be included in the replacement support order as in steps 2a through 2d below.

   a. Performs a guidelines calculation and determines the child support amount to be ordered, as in section CS 404.1, Child Support Guidelines.

   b. If the child support amount determined in step 2a represents a decrease in the support obligation, determines whether retroactive relief is appropriate. Generally retroactive relief is appropriate when
      - the obligor is currently willing to work with the CSED in setting a more reasonable monthly amount, and
      - the obligor"s current inability to pay the ordered amount extends back, continuously, through prior months.

   c. Determines the effective month for the replacement order as follows:

      i. If retroactive relief is appropriate, the effective month may be any prior month relating to an applicable development or condition in the case (for example, the month in which the obligor contacted the CSED to cooperate in determining a reasonable amount; or the first month in which the amount due was unreasonable in relation to the obligor"s ability to pay).

      ii. If retroactive relief is not appropriate, the effective month is the current month. (If the obligor will have overpaid the current month based on the new support amount, the effective month should be the next month; any judgment in step 2d should then include the current month.)

   d. Determines the child support judgment amount to be included in the replacement order as follows, where

      A = the total child support obligation from commencement of the obligation through the previous month, using the new amounts determined in 2a for the effective and following months, and

B = total child support payments through the previous month:

Sets the judgment amount at A minus B. If A minus B equals a negative amount, adjusts the effective month in step 2c as necessary to retain a total obligation greater than or equal to the payments received. The judgment period extends through the previous month.

3. Prepares form CS-401.5, Motion and Order Replacing Support Order (MORSO) as follows:

   a. If the existing order is for a third-party case, selects the third-party option. If the third-party custodian has changed, adjusts the document off-SEARCHS to ensure the custodian in the existing order is retained as the "obligee." (CAUTION: The replacement process is not appropriate for cases where the existing order is for a third-party case but the obligee is now a parent (see step 1b).)

      Does not select the third-party option in cases where the existing order obligates both parents, even if the case is now a third-party case. The replacement order must continue to obligate both parents.

   b. Enters the date of entry of the existing support order. Enters the effective date of the replacement support order (the first day of the effective month from step 2c).

   c. Enters the child support amount from step 2a, selecting the non-per child language if applicable.

   d. Enters the judgment amount and ending month from step 2d. If the judgment amount includes payments by the obligor, adds a statement to the standard judgment language in the MORSO explaining that the total judgment includes a payment of $[amount].

   e. If there is a domestic violence indicator on SEARCHS for the MORSO subcase (obligee and obligor), checks to make sure neither certificate of mailing includes an address for the person who is listed as the alleged victim.

   f. Does not select the amended motion option for the first MORSO; amended motion language is available for subsequent motions only (see step 6).

   g. Adjusts the language of the replacement order as required in section CS 404.1 for variances or other contingencies.

   h. If the existing support order includes a provision for immediate enrollment (this provision was added to the NOCS establishment process in January 2002), revises the obligor health insurance paragraph in the MORSO to read as follows:

"The Obligor shall provide health insurance when it is available, whether individually or through an employer or other group, at a reasonable cost. When dependent health insurance is available through the Obligor"s employer or payor, immediate enrollment applies, and the CSED may order the employer or payor and the plan administrator to withhold premiums and enroll the children (and the Obligor if necessary) in a health plan available to the Obligor"s dependents."

NOTE: Replacement to Retain Provisions of Existing Order. Because the MORSO process is a replacement action and not a modification action, the replacement support order must retain all the provisions of the existing support order except the support amount. This requirement applies to the provisions for income withholding, immediate enrollment, shared medical costs, and all other provisions not related to the actual dollar support amount.

4. Generates and signs the MORSO; completes and signs the first œrtificate of mailing, leaving the second certificate dates and signature blank (for later use by the OALJ); generates two extra sets of stuffers. Prepares a MORSO package for each addressee in the first certificate of mailing; the package contains
   - the MORSO (original for OALJ, copies for others),
   - the guidelines worksheet prepared in step 2 (attached to MORSO),
   - form CS-401.3M, Child Health Insurance Premiums, and
   - stuffers (one set, in OALJ package only).

   In a third-party case strikes through the OBJECTION section on the copy of the MORSO sent to the obligee. (The non-parent obligee cannot object; the copy is a courtesy copy only.) Retains a copy of the package and one set of stuffers for the case file.

5. Sends the packages by regular mail; monitors for timely response from the parents. Timely response may occur any time before the replacement support order is signed in step 8 or 10.

   a. If the parents" packages are not returned, presumes delivery and proceeds to step 6.

   b. If a package for an obligated parent is returned, alerts the OALJ and attempts to obtain an updated address for that parent.

      i. If a new address or information leading to a new address is found within 10 working days of alerting the OALJ, sends the returned MORSO to the new address; advises the OALJ, enters a SEARCHS case note, and proceeds to step 6.

      ii. If a new address or information leading to a new address cannot be found within 10 working days of alerting the OALJ, completes form CS-405.1B, Efforts to Locate for Service, documenting the first attempt at service (regular mail) and subsequent attempts to obtain a new address; sends a copy to the

OALJ. Continues with the procedures in this section as if service had been obtained.

6. If in response to the MORSO an obligated parent timely contacts the CSED and provides additional information that changes the amounts in the replacement support order, amends the MORSO to show the new amounts, and prepares and sends the amended MORSO packages as in steps 3 through 5. If the information does not produce a change in the amounts, reminds the parent of the opportunity to submit an objection. (If the response occurs after the order is signed in step 8 or step 10, proceeds as in step 14.)

7. If in response to the MORSO an obligated parent submits an objection to the motion, proceeds as applicable in steps 7a through 7c below.

   a. If the objection is received directly in the regional office and
      - the objection is timely, immediately faxes the objection (and mails the original) to the OALJ; proceeds to step 7b.
      - the objection is not timely, mails the objection to the OALJ and proceeds to step 13.

   b. Upon receipt of a copy of the objection from the OALJ, promptly informs the OALJ of any dates the caseworker will be unable to attend the objection hearing.

   c. Researches any issues raised in the objection, and contacts the obligated parents. Identifies and attempts to resolve the parents' issues according to procedures for the pre-hearing contact in section CS 401.3. Depending on the results of the contact,
      - dismisses the motion as in section 401.3; or
      - amends the motion as in step 6, this section; or
      - obtains the requestor's withdrawal of the objection (the requestor can withdraw the objection by submitting a written request to the OALJ); or
      - issues a hearing checklist as in section 401.3 (adapting the document to address the elements of the MORSO case), and proceeds in step 9, this section.

OFFICE OF THE ADMINISTRATIVE LAW JUDGE (OALJ)

8. Upon receipt of the MORSO from the caseworker, sets a tickler for three mailing days plus 10 working days after the date in the first certificate of mailing. If advised by the caseworker that the MORSO has been resent to a new address for any obligated parent, adjusts the tickler to extend the response time for that parent. If deemed service of process applies (step 5b(ii)), does not adjust the response time.

   a. If no objection is timely received, obtains the signature of the Administrative Law Judge in the deemed consent section and proceeds to step 11.

b. If a timely objection is received, schedules a hearing on the motion according to the procedures in section 401.3; also follows the procedures in that section for vacating the hearing if applicable.

c. If an amended MORSO is received from the caseworker, resets the tickler and follows the procedures in this step (8a or 8b) as for an original MORSO. If a hearing was scheduled on the first MORSO, automatically applies the request to the amended MORSO. If the requestor withdraws the request, follows the procedures in section CS 401.3 as applicable for vacating (or not vacating) the hearing.

Caseworker

9. Prepares testimony for the hearing as in section CS 401.3. Note that the prima facie case in the replacement action comprises the following elements:

   (1) The CSED's authority to proceed, personal jurisdiction over the obligated parents, and service of the MORSO.
   (2) The existence of a previously entered CSED financial support order that is not based on the guidelines, and the lack of any existing financial support order based on the guidelines.
   (3) The parents' obligation to support the children.
   (4) The parents' financial ability to support the children according to the guidelines determination.

   Prepares and submits exhibits, arranges for witnesses, and participates in the hearing as a witness, as in section CS 401.3, Notice and Order Concerning Support, including pursuit of any judgment listed in the MORSO.

Administrative Law Judge (ALJ)

10. Conducts a hearing on the CSED motion, issues a proposed decision and order, considers any motion for review, and issues a final decision and order, as for a NOCS hearing in section CS 401.3.

OALJ

11. Upon obtaining the signature of the ALJ on the final replacement support order in step 8 or 10, enters a SEARCHS case note for the final decision and order signed; signs and dates the appropriate certificate of mailing (for deemed consent, uses the second certificate of mailing in the MORSO). Mails copies of the replacement support order to the obligated parents, any third-party obligee, and the caseworker, retaining the original for the file. Abstracts the order to the appropriate district court, enters a SEARCHS case note, and mails copies of the filed abstract to the people who received copies of the order. Monitors for receipt of a petition for judicial review.

12. If an objection is received after the order is signed in step 8 or 10, prepares, obtains the ALJ's signature on, and processes an order denying the hearing for an untimely objection.

Caseworker

13. Upon notification that the final replacement support order is entered, adjusts the SEARCHS accounts, updates the SOD screen, and proceeds with enforcement. (Because of the judgment in the MORSO, a withholding notice for new arrears amounts is not required). In the case of oral notification at the hearing, enters the appropriate SEARCHS case note and monitors for receipt of the written copy.

    In cases where income withholding is currently in place for arrears adjudicated under the withholding process, and
    - replacement is retroactive, or
    - replacement is prospective and the MORSO judgment includes months not included in the last SNOI,

    updates the monthly withholding for arrears to 1/24th of the total child support judgment in the MORSO. (Montana statute does not address this situation; the requirement to update the withholding for arrears is based on CSED policy and case law.)

    If replacement is prospective and the MORSO judgment does not include new months, the monthly withholding for arrears may be maintained at the existing amount.

14. If contacted by a parent dissatisfied with a replacement order entered in step 8 or step 10, proceeds as applicable in section CS 401.3. For an order entered by deemed consent in step 8, the "default set-aside" option in section 401.3 applies. (Note that judicial review is available after a MORSO hearing because the decision and order represents a final agency action.)

SUPERSEDES

CS 401.5, Motion and Order Replacing Support Order, June 1, 2000

REFERENCES

MCA §§40-5-225 through 40-5-227

POLICY

Replacement vs. Modification. The CSED adjusts amounts due under a support obligation by replacing or modifying the support order. Replacement is available only for CSED orders that are not based on the Montana Child Support Guidelines for all the children in the case. Orders containing "guidelines" amounts for all the children can be adjusted only by modification, according to the procedures in section CS 408.3. Because of the CSED"s transition from one-parent to two-parent establishment in 1997, certain CSED non-guidelines orders are not appropriate for replacement, but require modification to add the second parent"s obligations.

Types of Replacement, Criteria. There are three types of CSED replacement actions. Replacement procedures in this section, Motion and Order Replacing Support Order (MORSO), apply when the case meets the following criteria:

(1) The existing support order was entered by the CSED on or after July 1, 1997 (i.e., as the result of a Notice and Order Concerning Support under procedures in section CS 401.3).
(2) The amounts contained in the order were based on Temporary Assistance to Needy Families (TANF) benefit amounts, or other non-guidelines amounts described in MCA 40-5-226(7)(b).
(3) No children are being added to the order.

If the existing order was entered by a court or another state's IV-D agency, replacement is not available.

If the existing order was entered by the CSED before July 1, 1997 (i.e., as a result of a Notice of Financial Responsibility), replacement is accomplished through a Notice of Intent to Vacate (NOIV); procedures are available from the regional NOIV representative. The NOIV action replaces the support amount only; it cannot be used to change any other provisions of the order, or to add a child to the existing obligation.

If the CSED is seeking to establish support for an additional child in the case, then the replacement procedures in section CS 401.6, Subsequent Notice and Order Concerning Support, apply regardless of how the existing support amounts were determined or when the existing order was entered.

The following table shows which type of support adjustment is available for each combination of case facts. Note that the table applies to only CSED-issued support orders. Any change to a non-CSED order requires a modification.

	Case Facts (CSED Orders)		
Basis for Support Amount	No additional children, pre-7/97 order	No additional children, 7/97+ order	Adding a child
Guidelines	Modification	Modification	SNOCS*
Non-Guidelines	NOIV	MORSO*	

* Further criteria may apply (see sections 401.5 and 401.6); if a MORSO or SNOCS is not available, a modification or separate NOCS may be required.

PROCEDURES

Caseworker

1. After entry of a support order containing TANF amounts, proceeds as in steps 1a and 1b below.

   a. Upon receiving both (1) a request from an obligated parent for replacement of the order and (2) financial information sufficient to perform a guidelines calculation, proceeds to step 1b. (At the caseworker"s option, deems the parent"s request in (1) upon discovering the necessary financial information.)

   b. Determines whether replacement of the existing order is appropriate. Replacement applies only when both of the following conditions are met:
      (1) The existing order was entered according to procedures for the Notice and Order Concerning Support in section CS 401.3.
      (2) The existing order obligates any current parent obligee.

      If replacement is appropriate, proceeds to step 2. (In arrears-only cases, negotiates a lump-sum settlement wherever possible. In cases where there is an enforceable current support obligation, the obligor or obligee must apply for CSED services before the CSED can begin replacement procedures.)

      If replacement is not appropriate, proceeds in step 1c.

   c. Where replacement is not appropriate, provides an opportunity for review and modification of the order as follows:

      i. If an actual request was received in step 1a, informs the requestor that the order can be changed only by modification; proceeds to step 1c(iii).

ii. If the CSED deemed the request in step 1a, determines whether the case meets the criteria in section CS 408.3 for modification initiated by the CSED; if so, follows procedures in that section for initiating a review, and takes no further action in this section. If CSED-initiated review does not apply, contacts the parent and explains the order may be eligible for review and possible modification based on the new financial information; proceeds to step 1c(iii).

iii. If the requestor (or deemed requestor) wishes to proceed, prepares and sends form CS-408.3A, Request for Review, and follows procedures in section CS 408.3, Review and Modification of Support Order. Takes no further action in this section.

2. Determines the amounts to be included in the replacement support order as in steps 2a through 2d below.

   a. Performs a guidelines calculation and determines the child support amount to be ordered, as in section CS 404.1, Child Support Guidelines.

   b. If the child support amount determined in step 2a represents a decrease in the support obligation, determines whether retroactive relief is appropriate. Generally retroactive relief is appropriate when
      - the obligor is currently willing to work with the CSED in setting a more reasonable monthly amount, and
      - the obligor"s current inability to pay the ordered amount extends back, continuously, through prior months.

   c. Determines the effective month for the replacement order as follows:

      i. If retroactive relief is appropriate, the effective month may be any prior month relating to an applicable development or condition in the case (for example, the month in which the obligor contacted the CSED to cooperate in determining a reasonable amount; or the first month in which the amount due was unreasonable in relation to the obligor"s ability to pay).

      ii. If retroactive relief is not appropriate, the effective month is the current month. (If the obligor will have overpaid the current month based on the new support amount, the effective month should be the next month; any judgment in step 2d should then include the current month.)

   d. Determines the child support judgment amount to be included in the replacement order as follows, where

      A = the total child support obligation from commencement of the obligation through the previous month, using the new amounts determined in 2a for the effective and following months, and

B = total child support payments through the previous month:

Sets the judgment amount at A minus B. If A minus B equals a negative amount, adjusts the effective month in step 2c as necessary to retain a total obligation greater than or equal to the payments received. The judgment period extends through the previous month.

3. Prepares form CS-401.5, Motion and Order Replacing Support Order (MORSO) as follows:

   a. If the existing order is for a third-party case, selects the third-party option. If the third-party custodian has changed, adjusts the document off-SEARCHS to ensure the custodian in the existing order is retained as the "obligee." (CAUTION: The replacement process is not appropriate for cases where the existing order is for a third-party case but the obligee is now a parent (see step 1b).)

      Does not select the third-party option in cases where the existing order obligates both parents, even if the case is now a third-party case. The replacement order must continue to obligate both parents.

   b. Enters the date of entry of the existing support order. Enters the effective date of the replacement support order (the first day of the effective month from step 2c).

   c. Enters the child support amount from step 2a, selecting the non-per child language if applicable.

   d. Enters the judgment amount and ending month from step 2d. If the judgment amount includes payments by the obligor, adds a statement to the standard judgment language in the MORSO explaining that the total judgment includes a payment of $[amount].

   e. If there is a domestic violence indicator on SEARCHS for the MORSO subcase (obligee and obligor), checks to make sure neither certificate of mailing includes an address for the person who is listed as the alleged victim.

   f. Does not select the amended motion option for the first MORSO; amended motion language is available for subsequent motions only (see step 6).

   g. Adjusts the language of the replacement order as required in section CS 404.1 for variances or other contingencies.

   h. If the existing support order includes a provision for immediate enrollment (this provision was added to the NOCS establishment process in January 2002), revises the obligor health insurance paragraph in the MORSO to read as follows:

"The Obligor shall provide health insurance when it is available, whether individually or through an employer or other group, at a reasonable cost. When dependent health insurance is available through the Obligor"s employer or payor, immediate enrollment applies, and the CSED may order the employer or payor and the plan administrator to withhold premiums and enroll the children (and the Obligor if necessary) in a health plan available to the Obligor"s dependents."

NOTE: Replacement to Retain Provisions of Existing Order. Because the MORSO process is a replacement action and not a modification action, the replacement support order must retain all the provisions of the existing support order except the support amount. This requirement applies to the provisions for income withholding, immediate enrollment, shared medical costs, and all other provisions not related to the actual dollar support amount.

4. Generates and signs the MORSO; completes and signs the first certificate of mailing, leaving the second certificate dates and signature blank (for later use by the OALJ); generates two extra sets of stuffers. Prepares a MORSO package for each addressee in the first certificate of mailing; the package contains
   - the MORSO (original for OALJ, copies for others),
   - the guidelines worksheet prepared in step 2 (attached to MORSO),
   - form CS-401.3M, Child Health Insurance Premiums, and
   - stuffers (one set, in OALJ package only).

   In a third-party case strikes through the OBJECTION section on the copy of the MORSO sent to the obligee. (The non-parent obligee cannot object; the copy is a courtesy copy only.) Retains a copy of the package and one set of stuffers for the case file.

5. Sends the packages by regular mail; monitors for timely response from the parents. Timely response may occur any time before the replacement support order is signed in step 8 or 10.

   a. If the parents" packages are not returned, presumes delivery and proceeds to step 6.

   b. If a package for an obligated parent is returned, alerts the OALJ and attempts to obtain an updated address for that parent.

      i. If a new address or information leading to a new address is found within 10 working days of alerting the OALJ, sends the returned MORSO to the new address; advises the OALJ, enters a SEARCHS case note, and proceeds to step 6.

      ii. If a new address or information leading to a new address cannot be found within 10 working days of alerting the OALJ, completes form CS-405.1B, Efforts to Locate for Service, documenting the first attempt at service (regular mail) and subsequent attempts to obtain a new address; sends a copy to the

OALJ. Continues with the procedures in this section as if service had been obtained.

6. If in response to the MORSO an obligated parent timely contacts the CSED and provides additional information that changes the amounts in the replacement support order, amends the MORSO to show the new amounts, and prepares and sends the amended MORSO packages as in steps 3 through 5. If the information does not produce a change in the amounts, reminds the parent of the opportunity to submit an objection. (If the response occurs after the order is signed in step 8 or step 10, proceeds as in step 14.)

7. If in response to the MORSO an obligated parent submits an objection to the motion, proceeds as applicable in steps 7a through 7c below.

    a. If the objection is received directly in the regional office and
        - the objection is timely, immediately faxes the objection (and mails the original) to the OALJ; proceeds to step 7b.
        - the objection is not timely, mails the objection to the OALJ and proceeds to step 13.

    b. Upon receipt of a copy of the objection from the OALJ, promptly informs the OALJ of any dates the caseworker will be unable to attend the objection hearing.

    c. Researches any issues raised in the objection, and contacts the obligated parents. Identifies and attempts to resolve the parents' issues according to procedures for the pre-hearing contact in section CS 401.3. Depending on the results of the contact,
        - dismisses the motion as in section 401.3; or
        - amends the motion as in step 6, this section; or
        - obtains the requestor's withdrawal of the objection (the requestor can withdraw the objection by submitting a written request to the OALJ); or
        - issues a hearing checklist as in section 401.3 (adapting the document to address the elements of the MORSO case), and proceeds in step 9, this section.

OFFICE OF THE ADMINISTRATIVE LAW JUDGE (OALJ)

8. Upon receipt of the MORSO from the caseworker, sets a tickler for three mailing days plus 10 working days after the date in the first certificate of mailing. If advised by the caseworker that the MORSO has been resent to a new address for any obligated parent, adjusts the tickler to extend the response time for that parent. If deemed service of process applies (step 5b(ii)), does not adjust the response time.

    a. If no objection is timely received, obtains the signature of the Administrative Law Judge in the deemed consent section and proceeds to step 11.

b. If a timely objection is received, schedules a hearing on the motion according to the procedures in section 401.3; also follows the procedures in that section for vacating the hearing if applicable.

c. If an amended MORSO is received from the caseworker, resets the tickler and follows the procedures in this step (8a or 8b) as for an original MORSO. If a hearing was scheduled on the first MORSO, automatically applies the request to the amended MORSO. If the requestor withdraws the request, follows the procedures in section CS 401.3 as applicable for vacating (or not vacating) the hearing.

Caseworker

9. Prepares testimony for the hearing as in section CS 401.3. Note that the prima facie case in the replacement action comprises the following elements:

    (1) The CSED's authority to proceed, personal jurisdiction over the obligated parents, and service of the MORSO.
    (2) The existence of a previously entered CSED financial support order that is not based on the guidelines, and the lack of any existing financial support order based on the guidelines.
    (3) The parents' obligation to support the children.
    (4) The parents' financial ability to support the children according to the guidelines determination.

    Prepares and submits exhibits, arranges for witnesses, and participates in the hearing as a witness, as in section CS 401.3, Notice and Order Concerning Support, including pursuit of any judgment listed in the MORSO.

Administrative Law Judge (ALJ)

10. Conducts a hearing on the CSED motion, issues a proposed decision and order, considers any motion for review, and issues a final decision and order, as for a NOCS hearing in section CS 401.3.

OALJ

11. Upon obtaining the signature of the ALJ on the final replacement support order in step 8 or 10, enters a SEARCHS case note for the final decision and order signed; signs and dates the appropriate certificate of mailing (for deemed consent, uses the second certificate of mailing in the MORSO). Mails copies of the replacement support order to the obligated parents, any third-party obligee, and the caseworker, retaining the original for the file. Abstracts the order to the appropriate district court, enters a SEARCHS case note, and mails copies of the filed abstract to the people who received copies of the order. Monitors for receipt of a petition for judicial review.

12. If an objection is received after the order is signed in step 8 or 10, prepares, obtains the ALJ's signature on, and processes an order denying the hearing for an untimely objection.

Caseworker

13. Upon notification that the final replacement support order is entered, adjusts the SEARCHS accounts, updates the SOD screen, and proceeds with enforcement. (Because of the judgment in the MORSO, a withholding notice for new arrears amounts is not required). In the case of oral notification at the hearing, enters the appropriate SEARCHS case note and monitors for receipt of the written copy.

    In cases where income withholding is currently in place for arrears adjudicated under the withholding process, and
    - replacement is retroactive, or
    - replacement is prospective and the MORSO judgment includes months not included in the last SNOI,

    updates the monthly withholding for arrears to 1/24th of the total child support judgment in the MORSO. (Montana statute does not address this situation; the requirement to update the withholding for arrears is based on CSED policy and case law.)

    If replacement is prospective and the MORSO judgment does not include new months, the monthly withholding for arrears may be maintained at the existing amount.

14. If contacted by a parent dissatisfied with a replacement order entered in step 8 or step 10, proceeds as applicable in section CS 401.3. For an order entered by deemed consent in step 8, the "default set-aside" option in section 401.3 applies. (Note that judicial review is available after a MORSO hearing because the decision and order represents a final agency action.)

SUPERSEDES

[new section]

REFERENCES

40-5-225(10), MCA.

POLICY

Purpose. This section implements section 40-5-225(10), MCA, which reads,

"After establishment of an order under [40-5-225], the department may initiate a subsequent action on the original order to establish a support obligation for another child of the same parents."

Replacement. The CSED takes the "subsequent action" mentioned above by replacing the existing order with an order that includes the additional ("another") child. This replacement action is similar to other CSED replacement actions where the existing order is not based on the Montana Child Support Guidelines; in this situation the existing order does not apply the guidelines for the additional child. Note that the replacement action is not the same as a modification action, which involves different forms, procedures, and responsibility, and which is subject to additional federal regulations. However, in some situations (see Limitations below) replacement under this section is not available, and the CSED must use modification or initial establishment to gain enforcement status for the child.

Advantages. The explicit authority to add a child to an existing support order has several advantages:

(1) The opportunity to include all of the children of the case in one guidelines calculation, and to obtain a more accurate support amount as a result.

(2) The opportunity to reduce the number of support orders containing the total obligations in the case, resulting in more efficient and accurate support order tracking and reporting.

(3) The ability to establish support outside of the modification process. Modification generally requires more CSED time and resources than does basic establishment, is subject to stricter federal time frames for overall completion, and is not easily coordinated with paternity action for purposes of meeting the applicable federal service-of-process time frame.

Limitations. There are a number of limitations to the CSED"s authority to add a child to an existing support order. First, by statute the authority does not apply to cases where the existing order is a non-CSED order, or where the existing order is a modification order. In these situations the CSED is limited to establishing a separate order for the additional child under section CS 401.3, or modifying the order subject to federal time frames.

Second, CSED policy precludes the use of the authority in cases where there is a support action pending in district court for the additional child, or where the existing order is a temporary support order. EXCEPTION: In cases where the court action has been pending for an extended period of time and further delay would not be in the best interests of the additional child, the CSED may proceed with the replacement action upon approval of the CSED staff attorney. Documents issued in the action must be adjusted to include "temporary" language and to accommodate any other case facts related to the exception.

Finally, in certain situations specified in the PROCEDURES later in this section, there can be practical or legal obstacles to replacing an existing order; these obstacles generally involve the rights of a parent obligee, the coordination of current custody, or the requirements of the guidelines. However, in most cases not subject to the statutory or policy limitations in the preceding paragraphs, the steps given in this section for establishing support for additional children will apply.

Differences from Initial Establishment Process. When a replacement action does apply, the PROCEDURES in this section differ from those in section CS 401.3, Notice and Order Concerning Support (NOCS) in the following ways:

(1) The Subsequent Notice and Order Concerning Support (SNOCS) does not contain a judgment; the new support amount is established prospectively only. The first-payment/ effective date is determined automatically based on the date of entry of the order.

(2) The SNOCS document on SEARCHS does not contain a "temporary support" option. In exceptional cases where a temporary support obligation is appropriate, the document is adjusted off-line.

(3) The exception to income withholding is available--under certain conditions--in the initial SNOCS as well as the amended SNOCS.

(4) If the obligee has changed since entry of the existing order, the former obligee receives a copy of the SNOCS notice package and the final order.

(5) Document generation on SEARCHS requires selection of the correct subcase, existing order, and former obligee.

(6) All SNOCS default, consent, and default/ consent packages are submitted for supervisor approval before being forwarded to the Office of the Administrative Law Judge for entry of an order.

PROCEDURES
Caseworker

1. **Identifying a Case.** Identifies a case appropriate for replacement action in this section by applying the criteria in (1) through (5) below. If the case meets **all** of the criteria, proceeds to step 3. If not, proceeds in step 2.

   (1) **Existing order.** There is a financial support order in effect that was established by the CSED and that is not a modification order. The support order may be the result of a Notice and Order Concerning Support, a Subsequent Notice and Order Concerning Support, a Motion and Order Replacing Support Order, a Notice of Financial Responsibility (with or without a Notice of Medical Responsibility), or a Notice of Intent to Vacate.

   (2) **Additional child.** There is an additional child of the same parents (or the same alleged parents) as the children in the existing order, and the following conditions apply:
   (a) The CSED is providing services in the case for the additional child.
   (b) Paternity has been established for the additional child (or the CSED is proceeding with a paternity action).
   (c) There is no existing financial support order, and no support action pending in district court, against the obligor in the case for the additional child. For purposes of these requirements a support order is "for the child" when the child is named in the order, or when the child is the subject of the guidelines calculation underlying the ordered amount.

   (3) **Replacement conditions.** It is possible to replace the existing order with a new order that includes the additional child and satisfies the following requirements (the new order is referred to in these PROCEDURES as the "replacement order"):

   (a) **Custodian.** The custodian of the additional child must be the obligee in the replacement order; the replacement order must include the additional child plus all of the children in the case who are connected on SEARCHS (via open accounts for current support) to that obligee.

   (b) **Obligee party.** If the obligee in the existing order was a party to the establishment action, that person must be the obligee in the replacement order. This requirement applies even when the obligee was a party for purposes of medical support only.

   (c) **Children's coverage.** When the replacement order is entered, each unemancipated child in the case, including the additional child, must be named in one and only one order for current financial support against the obligor.

   Examples applying conditions (a), (b), and (c) above are given in the tables at the end of this section.

(4) **Jurisdiction.** The CSED has personal jurisdiction for purposes of support order establishment over the obligor and over any obligee parent who will be a party in the replacement action. (In most cases an obligee parent will be a party; see section 401.3 for exceptions.)

(5) **Assistance status.** Either the obligor or the obligee in the replacement action is not receiving public assistance money.

2. **Cases Not Appropriate for Replacement Action.** If a case fails to qualify for replacement action in this section, reviews other means for gaining an enforcement status for the child against the obligor, and takes action as appropriate.

   Note that the "other means" identified in this step will generally involve either modification under section CS 408.3 or 408.5, or initial establishment under section CS 401.3, depending on the facts of the case. In some cases no action is possible until the facts change. **IMPORTANT:** Federal establishment time frames apply regardless of whether the CSED uses the modification process or the Notice and Order Concerning Support (NOCS) to establish a support obligation for the additional child. If paternity must be established, the modification option becomes impractical, as CSED policy requires that any action to establish support for the child be initiated at the same time as the paternity action.

3. **Gathering Financial Information; Calculating Support.** Gathers information in preparation for a guidelines calculation as in section CS 401.3. Information should include the most current data from the following sources:
   (1) The financial information used to determine the existing support obligation.
   (2) Any financial information submitted by the parents or discovered by the CSED since the determination.

   Also, when appropriate and at the discretion of the caseworker, prepares and sends to the obligee form CS-401.3H, Letter to Obligee Requesting Financial Affidavits. The letter asks the obligee to complete a Financial Affidavit, and also requests the obligee's assistance in providing information about the obligor in a separate Financial Affidavit. (Note that this letter is generally used in the absence any financial or wage information about the obligor; however, it also may be used to increase or confirm existing information.)

   Performs a guidelines calculation as in section CS 401.3 **for all of the children in the replacement order** (and any additional "split custody" children required in section CS 404.1). Note that in most cases the monthly support amount payable per child will differ from the per-child amount in the existing support order. Proceeds to step 4.

   EXCEPTION: Insufficient Information. If the amount in the existing order was not based on a guidelines calculation, **and** if the assembled information is not sufficient to reasonably approximate or impute the obligor"s income, the CSED will determine support based on the public assistance grant amount, as in section CS 401.3.

4. **Subsequent Notice and Order Concerning Support.** Prepares form CS-401.6A, Subsequent Notice and Order Concerning Support (SNOCS) listing the support amount from step 3 and the date and cause number of the existing order; selects text and printing options as in section CS 401.3 or, for exceptions to income withholding, as in substep 4a below. In special cases also proceeds according to substeps 4b through 4e below.

   a. **Exception to Income Withholding.** If an exception to income withholding is currently in place in the case, determines whether the exception still applies based on the criteria in section CS 401.3. If so, selects the appropriate option for the SNOCS (exception for good cause, or exception for an alternative arrangement), and prepares a new form CS-401.3E, Exception to Income Withholding, to re-authorize the exception.

   b. **Multiple Existing Support Orders.** In a case with more than one support order, determines which support order(s) should be replaced by applying the requirements listed in step 1, item (3). (Note that a SNOCS action can replace one, some, or all of the existing orders.) If the new order must replace more than one existing support order in the case, adjusts the language in the SNOCS to identify and refer to all of the orders being replaced. See the tables at the end of this section for examples of replacement in multiple-order cases.

      Note that multiple orders may exist for different obligees, or for separate financial and medical obligations owed to the same obligee. During a period in 1996 and 1997 the CSED entered medical consent and default orders separately from the corresponding financial support orders, even though the financial order incorporated the medical order by reference. In these cases the CSED must replace both the financial and the medical order, naming each separately.

   c. **Change in Obligee.** If the obligee listed in the SNOCS will be different from the obligee named in the existing order, proceeds in steps 4c(i) and 4c(ii) below.

      i. Ensures both names are listed in the heading of the SNOCS--the custodian of the additional child as the "obligee," and the obligee from the existing order as the "former obligee." Also ensures the former obligee is included in the certificate of mailing for a copy of the final order.

      ii. Manually adjusts all other documents issued in the replacement action to reflect the heading and, if applicable, the certificate of mailing in the SNOCS. Other documents may include the Entry of Support Order, the Sheriff's Praecipe, the Acknowledgment of Receipt of Notice and Waiver of Service, the Exception to Income Withholding, the Notice of Default, or any motions or other documents required to complete the replacement action.

NOTE: Former Obligee Role in SNOCS. The former obligee is not a party to the SNOCS action, but is listed in the SNOCS document for purposes of continuity in the district court filing. The CSED provides a copy of the notice and the final order to the former obligee as a courtesy in connection with the original action.

d. **Suppression of Address for Domestic Violence.** If there is a domestic violence indicator on SEARCHS for the subcase with the SNOCS obligee and obligor, checks to make sure the certificate of mailing does not list an address for the person who is listed as the alleged victim.

e. **Emancipation of a Child.** If any child listed in the heading of the order that is being replaced has emancipated (is no longer a "child" under the definition in 40-5-201, MCA), does not include the emancipated child in the SNOCS, but adds a statement about the emancipation to the notice portion of the SNOCS. (For example, "The child Timmy Martin named in the existing order is not named above; he is not included in the SUPPORT ORDER because he is no longer recognized as a "child" under 40-5-201, MCA.")

5. **Notice Package.** Attaches to the SNOCS document a copy of the order that is being replaced. Prepares a notice package as in section CS 401.3 for each parent who has a support obligation in the SNOCS. If applicable, coordinates service and resolution of a Notice of Parental Responsibility as in section CS 401.3 for the additional child.

   Sends copies of the SNOCS (hearing request removed), guidelines worksheets, and existing order by regular mail to any third-party obligee and any former obligee listed in the SNOCS.

6. **Obtaining Service.** Obtains service of the SNOCS package as in section CS 401.3 on each parent who has a support obligation in the SNOCS. If service cannot be obtained on an obligee who has a support obligation because the obligee"s whereabouts are unknown, begins case closure procedures against the obligee and, if the SNOCS has already been served on the obligor, dismisses the SNOCS as in section CS 401.3.

7. **Change in Case Facts.** If before resolution of the SNOCS the CSED receives information from an obligated parent or another source proving
   - that any of the conditions in step 1 do not apply, dismisses the SNOCS as in section CS 401.3.
   - that any of the case facts reflected in the SNOCS is incorrect, but an SNOCS still applies under the conditions in step 1, amends the SNOCS and proceeds as in section CS 401.3 for the amended notice.
   - that the conditions in section CS 401.3 for an exception to immediate withholding now apply, amends the SNOCS to include an exception to income withholding, and prepares form CS-401.3E as in step 4a; proceeds as in section CS 401.3 for the amended notice.

8. **Resolving the SNOCS; Supervisor Approval.** Completes any notification requirements, and obtains resolution of the SNOCS by consent, default, or hearing, as in section CS 401.3. Obtains the supervisor"s approval of any consent or default package before forwarding the package to the Office of the Administrative Law Judge for processing of the order.

Office of the Administrative Law Judge/ Administrative Law Judge

9. **Entry of Order; Hearing; Supplemental Abstract.** Processes any consent or default support order or any request for hearing resulting from the SNOCS as in section CS 401.3. In a hearing, excludes any issues the parent could have contested in the action establishing the existing order. Upon entry of a final order, prepares a supplemental abstract and files it with the district court. The supplemental abstract is required in all cases where a child is being added to the support obligation.

Caseworker

10. **SOD Screen; Enforcement.** Updates the SEARCHS SOD screen to add the new support order and to revise the status of each support order being replaced. Adjusts accounts, and proceeds to enforce the support obligation for the additional child.

I. Basic Case

Case No.	Existing Order (Oblgee + Child)	Current CP with Child on SEARCHS	Additional Child + Oblgee	Obligee + Children for SNOCS	SNOCS OK?	Reasons
1	Mom + A	(same)	B + Mom	Mom + A+B	Yes	BASIC CASE: Two-obligation SNOCS
2	Grandma + A	(same)	B + Grandma	Grandma + A+B	Yes	BASIC CASE: Third-party SNOCS
3	Mom + A; Grandma + B	(same)	C + Mom	Mom + A+C	Yes	BASIC CASE: Replace Mom's order, retain Grandma's (Grandma's order has no effect on SNOCS)
4	Mom + A+B	Mom + A (B emancipated)	C + Mom	Mom + A+C	Yes*	BASIC CASE: OK to leave B out of SNOCS; Mom's rights for arrears still continue
5	Grandma + A	(same)	B + Mom	Mom + B	No	Leaves A with no order

"Mom" means any parent obligee
"Grandma" means any third-party obligee (including IV-E foster care)

* Customize the SNOCS text to explain B is emancipated; do not include B in the SNOCS headings.

II. Change in CP Since Order Entered

Case No.	Exsting Order(s) (Oblgee + Child)	Current CP with Child on SEARCHS	Additional Child + Oblgee	Obligee + Children for SNOCS	SNOCS OK?	Reasons
1	Any Mom + A	Grandma + A	B + Mom	Mom + B	No	Leaves A without an order
2	Any Mom + A+B	Mom + B Grandma + A	C + Mom	Mom + B+C	No	Leaves A without an order
3	Nonparty Mom + A	Grandma + A	B + Grandma	Grandma + A+B	Yes	All children have orders
4	Party Mom + A	Grandma + A	B + Grandma	Grandma + A+B	No	Mom loses party rt for A
5	Grandma + A	Mom + A	B + Mom	Mom + A+B	Yes	All children have orders; Grandma never had party rt
6	Grandma + A	Aunt + A	B + Grandma	Grandma + B	No	Leaves A without an order (two third-party obligees still treated separately)
7	Any Mom + A; Grandma + B	Mom + A+B	C + Mom	Mom + A+B+C	Yes--replacing both ords	Must replace both to avoid having A or B in two orders
8	Any Mom + A; Grandma + B	Mom + B Grandma + A	C + Mom	Mom + B+C	Yes--replacing Grandma's order	Must retain Mom's existing order to avoid leaving A without order ($ will follow A to Grandma)
9	Party Mom + A; Grandma + B	Grandma + A+B	C + Grandma	Grandma + A+B+C	No	- Repl Mom's order: Mom loses party right for A; also, B in two orders - Repl Grandma's order: A in two orders - Repl both orders: Mom loses party right for A
10	Any Mom + A; Grandma + B	Grandma + A+B	C + Mom	Mom + C	No	Replacing either or both leaves child without an order

"Any Mom" means any parent obligee; "Nonparty Mom" means a parent obligee who is not a party to the order; "Party Mom" means a parent obligee who is a party to the order; "Grandma" means any third-party obligee (including IV-E foster care)

III. Children with Obligor

Case No.	Exsting Order: Oblgee + Child	Custody at Time of Order and Now	Additional Child + Oblgee	Obee + Chldren for SNOCS (G/L calc*)	SNOCS OK?	Reasons/Comments
1	Mom + A (G/L for A+B)	Mom + A Dad + B(no case)	C + Mom	Mom + A+C (G/L for A+B+C)	Yes**	Basic case; sp cust G/L → sp cust G/L
2	Mom + A (G/L for A)	Mom + A Dad + B(no case)	C + Mom	Mom + A+C (G/L for A+B+C)	Yes**	Basic case; regular G/L → sp cust G/L
3	Mom + A (G/L for A)	Mom + A	C + Mom	Mom + A+C (G/L for A+C)	Yes	Basic case; SNOCS cannot replace orders in 2 cases at once
	Dad + B (G/L for B)	Dad + B				
4	Mom + A (G/L for A)	Mom + A	C + Mom	Mom + A+C (G/L for A+C)	Yes--replacing Mom's order	Basic case, third-party case treated separately
	Grandma + B (against Mom) (G/L for B)	Grandma + B				
5	Grandma + A (against Mom) (G/L for A)	Grandma + A	D + Grandma	Grandma + A+D (G/L for A+D)	Yes--replacing Grandma's order	Basic case, third-party case treated separately
	Mom + B (G/L for B+C)	Mom + B Dad + C(no case)				
6	Mom + A (G/L for A+B)	Mom + A Dad + B(no case)	(What if B comes to live with Mom?)	Mom + A+B??	No	B is not an "additional child" (B is subj of G/L in order against Dad); Mom can seek mod for chg/cust

* A two-parent guidelines calculation must include all the children of the biological relationship who live with either parent, except those already named in another order.

** If the SNOCS guidelines calculation produces a transfer payment in the opposite direction, determine whether establishment is appropriate; if so, consult the staff attorney for a custom draft.

SUPERSEDES

CS 404.1, "Child Support Guidelines," April 30, 1999

REFERENCES

MCA 40-5-209; ARM 37.62.101 through 148.

POLICY

Purpose and Use. The CSED is required by law to establish guidelines for determining child support obligations in Montana, and to review and update the guidelines every four years. The Montana Child Support Guidelines were adopted by the CSED in 1998 in the form of administrative rule. They are used by district courts, the CSED, attorneys, and parents to determine appropriate child support amounts for orders established or modified in Montana. This section contains policies and procedures for implementing the Guidelines through administrative process.

Philosophy. The Guidelines are based on the principle that the amount of support should reflect the income of both parents and the needs of the child. This principle is reflected in the following basic components of the Guidelines calculation:

TOTAL INCOME	-	DEDUCTIONS	=	**INCOME AFTER DEDUCTIONS**
INCOME AFTER DEDUCTIONS	-	PERSONAL ALLOWANCE	=	**INCOME AVAILABLE FOR CHILD SUPPORT**
CHILDREN'S PRIMARY ALLOWANCE	+	CHILDREN'S SUPPLEMENTAL NEEDS	=	**CHILDREN'S TOTAL NEEDS**
INCOME AVAILABLE FOR CHILD SUPPORT	-	CHILDREN'S TOTAL NEEDS	=	**INCOME AVAILABLE FOR SOLA***
INCOME AVAILABLE FOR SOLA	-	LONG-DISTANCE PARENTING ADJUSTMENT	=	**ADJUSTED INCOME AVAILABLE FOR SOLA**
ADJUSTED INCOME AVAILABLE FOR SOLA	x	SOLA PERCENTAGE**	=	**STANDARD OF LIVING ADJUSTMENT**
CHILDREN'S TOTAL NEEDS	+	STANDARD OF LIVING ADJUSTMENT	=	**SUPPORT AMOUNT**

* Standard of living adjustment

** Percentage depends on number of children

Rebuttable presumption. A support amount determined according to the Guidelines is presumed to be adequate and reasonable. The same presumption applies to each component amount used in the calculation of the final support amount. This presumption may be rebutted by evidence that the application of the Guidelines would be unjust or inappropriate. In addition, rebuttal of the final support amount (direct adjustment to the "bottom line") requires evidence that a different amount would be in the best interests of the child. As a matter of policy the CSED presumes that the best interests of the child are served when the support amount maximizes both the financial benefit to the child and the affordability/enforceability of the support payment.

Variances. An adjustment resulting from a rebutted presumption may or may not constitute a "variance" from the Guidelines. For purposes of this section a variance is any adjustment made directly to the final support amount, or to the adjusted income available for SOLA (see the components table on the previous page). When a variance applies, the support order must contain a specific finding explaining why the Guidelines amount (without the variance) would be unjust or inappropriate in the particular case. (Note that an adjustment to any of the following specific component amounts does **not** constitute a variance for purposes of the support order: income, deductions, personal allowance, children's primary allowance, children's supplemental needs, and long-distance parenting adjustment.)

Definitions. The following definitions taken from ARM 37.62.103 apply to terms used in the Guidelines:

Legal dependent means natural born and adopted minor children, spouses, special needs adult children, household members covered by a conservatorship or guardianship, and parent's parents living in the household who are claimed on tax returns as legal dependents.

Other child means a child whom a parent is legally obligated to support but who is not the subject of the child support calculation. A step-child is not considered an other child.

Pre-existing support order means an order entered by a tribunal of competent jurisdiction prior to the calculation or recalculation of support.

SOLA means standard of living adjustment.

Standard of living includes the necessities, comforts and luxuries enjoyed by either parent, the child or both parents and the child, which are needed to maintain them in customary or proper community status or circumstances.

Subsequent child means an "other" child who is either born after, or named in an order entered after, entry of the order being modified.

PROCEDURES

Caseworker

1. Initiating the Calculation. Upon identifying a biological unit (children sharing the same natural or adoptive mother and father) for whom a Guidelines determination is needed, proceeds in steps 1a through 1c below.

   a. Gathers financial information from both parents according to the procedures in unit CS 401 (establishment) or CS 408 (modification).

   b. Confirms that all the children of the biological unit have been identified.

   NOTE: Investigation Required. Initially, the CSED may be unaware of the existence of other children of the biological unit who are outside the CSED case. For purposes of the Guidelines calculation (see step 1c below) the caseworker must actively investigate to identify any additional children. The extent of the investigation depends on the facts of the case; in many cases, direct inquiry of both parents may be sufficient.

   c. Includes both parents and all the children in the calculation.

   The requirement for **both parents'** information applies even if
   - the children reside with a third party; or
   - the CSED does not have jurisdiction over one of the parents; or
   - the CSED does not have a case against one of the parents; or
   - there is already an order against one of the parents; or
   - the CSED intends to establish an order against only one of the parents.

   (EXCEPTION: In rare cases where the children reside with a third party and the CSED cannot obtain, estimate, or impute positive income information for one of the parents (for example, the parent is deceased, an unidentified father, permanently disabled with no usable income or assets, or for some other reason not available for child support), the CSED performs the calculation for the available parent only.)

   The requirement to include **all the children** in the calculation applies even if
   - the CSED intends to establish separate orders for separate children or groups of children; or
   - there is no CSED case for one or more of the children; or
   - there is an existing support order for one or more of the children; or
   - the parents are living together and some of the children live with the parents.

NOTE: Non-IV-D Cases. The CSED cannot perform a Guidelines calculation for a non-IV-D case. In cases where a Montana district court orders a parent to pay support in an amount to be determined by the CSED, the CSED requires that one of the parents apply for CSED services.

2. Performing the Calculation. Converts all financial information to annual amounts. Prepares Worksheets A through E (forms CS-404.1A through 1E) using the INSTRUCTIONS in this section **and** the instructions printed on the worksheets. Enters the support amount in the Notice and Order Concerning Support, or the Administrative/Proposed Modification Notice and Order, as applicable.

   Follows procedures in steps 3 through 9 below for implementing the Guidelines calculation within the establishment and modification processes.

3. Verifying Information. Verifies amounts included in the calculation as follows:

   a. Verifies a parent's actual income from the documents submitted by the parent (pay stubs, employer statements, income tax returns, profit and loss statements), or from SEARCHS information or direct contact with the payor. Where the facts indicate there may be additional unreported income, researches likely sources to the extent practical, and includes any additional amounts discovered. Does not include income as "actual" that cannot be documented in some way. (Where additional income is suggested by indirect factors such as lifestyle, but no documentation is available through ordinary channels, consults CSED staff attorney to identify other possible sources of documentation in the particular case.)

   b. Verifies the amounts of allowed deductions and expenses using payroll documents, court or administrative orders, other written proof of payment or amount, direct contact with a payor or insurance plan, or any combination of these. Expenses described as "actual" (see INSTRUCTIONS) must be supported by written proof of payment. Also, for each deduction or other expense verifies that the deduction or expense is allowable under the Guidelines, based on information provided by the parent or obtained from other sources.

   c. Presumes amounts taken from a parent's tax return to be correct unless there is evidence of possible error (failure to report a significant amount of applicable income; deductions for non-allowable expenses; or significant miscalculation of taxes or credits). If so, determines any corrections and substitutes the corrected amounts in the Guidelines calculation. Caseworker discretion applies in determining the extent to which tax return amounts should be examined or recalculated for Guidelines purposes.

4. Documenting Decisions. Documents reasons and considerations for allowing/not allowing expenses, and for including/not including income. Documents any subcalculations for amounts entered, if applicable (for example, averaging or projecting income for a twelve-month period; converting amounts to annual levels; determination of tax credits). For imputed income also documents data source. References documents from step 3 above that are retained in the physical file. Enters all "documenting" information called for in this step in a case note, the COMMENTS section of Worksheet A, or the physical file, as appropriate.

5. Cases Involving Third-Party Custodians. In cases where the obligee for any of the children for whom support is being established is a third-party custodian, adjusts the calculation to preserve both parents' individual obligations for each third-party child. Specifically, proceeds in section CS 404.3 according to the type of third-party arrangement in effect.

6. Modifications Involving Subsequent Children. In a modification proceeding where either parent claims a deduction from income for a "subsequent" child, applies the following RULE:

   RULE 22 MODIFICATIONS OF CHILD SUPPORT ORDERS....
   (3) In a proceeding to modify an existing order, the support obligation of each parent is calculated considering all children, prior and subsequent, of each parent. Then the support obligation of each parent is calculated considering no subsequent children of either parent.
   (a) If both calculations result in a decrease in the transfer payment due and payable from the obligated parent, the lesser of the decreases in the transfer payment is granted.
   (b) If both calculations result in an increase in the transfer payment due and payable from the obligated parent, the lesser of the increases in the transfer payment is granted.
   (c) If the first calculation results in a decrease and the second calculation results in an increase, or if the reverse is true, no modification is granted.

7. Social Security Payments for the Benefit of the Child. In a case where a child receives social security benefits as the result of a parent's disability, does NOT consider the amount of the child's benefit in the Guidelines calculation.

   (Once a support order is entered for the child and the case is in enforcement status, the CSED will credit the disabled obligor parent with full or partial payment of support for each month benefits accrue to the child. See ARM 37.62.144, Social Security Benefits, for details.)

8. Required Language in Support Orders. Adjusts the language in the support order as applicable when any of the following situations occurs:

   (1) A presumption is rebutted in such a way as to create a variance (see POLICY). The following RULE applies:

   RULE 2 REBUTTABLE PRESUMPTION....
   (2) At the request of one of the parties and upon consideration of the factors set out in the guidelines and in 40-4-204, 40-4-208 and 40-6-116, MCA, the guidelines may be rebutted and a variance from the guidelines amount may be granted. Any consideration of a variance from the guidelines must take into account the best interests of the child.

(3) The support order may vary from the guidelines in a particular case only if the decree, separation order or support order contains a specific written finding showing justification that application of the guidelines would be unjust or inappropriate, based upon evidence sufficient to rebut the presumption.
(4) Findings that rebut and vary the guidelines must include a statement of the amount of support that would have been ordered under the guidelines without the variance.

[Optional:] Attaches to the support order a separate worksheet containing the calculation without the variance.

If the variance is based on circumstances that may change, the following RULE also applies:

RULE 2 REBUTTABLE PRESUMPTION....
(6) A support order granting a variance, based upon the existence of a condition or the performance of an act, must provide that, upon termination of the circumstances which justify the variance, the support immediately reverts to the amount which would have been ordered under the guidelines without the variance.

CAUTION: Whenever possible the reverter language in the support order should be written so as to create an incentive for one or the other of the parents to inform the CSED when the circumstances justifying the variance have terminated (or, where appropriate, to provide proof to the CSED that the circumstances have not terminated).

If the variance is based on a stipulation or agreement between the parents, the support order must reference or attach the written stipulation/agreement. (Requirements for an acceptable stipulation/agreement are given in the INSTRUCTIONS FOR WORKSHEET A, COMMENTS line, later in this section.)

(2) A change in circumstances is anticipated within the next eighteen (18) months (regardless of whether a variance is involved) that will significantly affect the Guidelines calculation. The following RULE applies:

RULE 19 ANTICIPATED CHANGES
(1) When child support is determined, if any material change is anticipated within 18 months, separate child support calculations should be completed.
(2) In the initial calculation, present circumstances should be included. In the subsequent calculation(s), appropriate anticipated changes should be calculated. The child support order should provide that the amount(s) from the subsequent calculations will take effect the month following the anticipated changes.

[Optional:] Attaches to the support order a separate worksheet containing the calculation without the variance.

(3) [deleted--non-per child language covered in section CS 401.3]

9. Payment in Equal Monthly Installments. Upon entry of a support order establishing the support payment amount identified in Worksheet A, enforces the case according to the following RULE:

RULE 1 AUTHORITY, POLICY AND PURPOSE....
(3) These guidelines are structured to determine child support on an annual basis. Payment will be made in equal monthly installments.

The CSED believes it is in the best interests of the child to receive support on a regular monthly basis, since most of the child's financial needs continue regardless of the cash flow or visitation of the obligor. In cases where the obligor's visitation exceeds the normal amount, there is an appropriate credit already included in the Guidelines calculation. Accounting adjustments or support abatements to accommodate an obligor's fluctuating payments or extended visitation are prohibited, except in very unusual situations.

INSTRUCTIONS FOR COMPLETING WORKSHEET A

Line Description/Instructions

1 Income. Include in lines 1a through 1d, and 1f through 1h, all economic benefits actually received by the parent, **except** (1) expense offsets, (2) loan proceeds, (3) means-tested income, (4) social security benefits received on behalf of a child of the calculation, (5) income attributable to another person, and (6) overtime or second-job income earned by a parent with a "second" family. Further exceptions **may** be allowed for amounts received from one-time gifts, inheritances, winnings, lump-sum retirement distributions, and similar events; determine these exceptions on a case-by-case basis. Determine exceptions (1), (3), and (6) respectively according to the RULES below.

RULE 4 DETERMINATION OF INCOME FOR CHILD SUPPORT....
(2) Actual income includes: ....
(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursements of actual employment expenses may not be considered income for purposes of these rules.

RULE 4 DETERMINATION OF INCOME FOR CHILD SUPPORT....
(3) Income for child support does not include benefits received from means-tested veteran's benefits and means-tested public assistance programs including but not limited to the former aid to families with dependent children (AFDC), cash assistance programs funded under the federal temporary assistance to needy families (TANF)

block grant, supplemental security income (SSI), food stamps, general assistance and child support payments received from other sources.

RULE 4 DETERMINATION OF INCOME FOR CHILD SUPPORT....
(5) .... If a person with a subsequent family has income from overtime or a second job, that income is presumed to be for the use of the subsequent family, and is not included in income for child support for the purposes of determining support for a prior family.

1a Wages, salaries, commissions. Also include tips, bonuses, severance pay, draws or advances against earnings, and any other cash income directly related to work the parent performs for an employer. This type of income is subject to income tax and social security tax.

If necessary, income should be averaged or projected according to the following RULE to determine the amount most likely to apply to the next twelve months:

RULE 5 INCOME VERIFICATION/DETERMINING ANNUAL INCOME ....
(3) To the extent possible, income for child support and expenses should be annualized to avoid the possibility of skewed application of the guidelines based on temporary or seasonal conditions. Income and expenses may be annualized using one of the two following methods:
(a) seasonal employment or fluctuating income may be averaged over a period sufficient to accurately reflect the parent's earning ability; or
(b) current income or expenses may be projected when a recent increase or decrease in income is expected to continue for the foreseeable future. For example, when a student graduates and obtains permanent employment, income should be projected at the new wage.

1b Self-employment net earnings. Calculate the self-employment income according to the following RULE:

RULE 4 DETERMINATION OF INCOME FOR CHILD SUPPORT....
(2) Actual income includes: ....
(b) gross receipts minus reasonable ordinary and necessary expenses required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Straight line depreciation for vehicles, machinery and other tangible assets may be deducted if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal revenue service rules apply to determine expected life of assets. Business expenses do not include deductions relating to personal expenses, or expenses not required for the production of income.

Self-employment income is generally determined from information provided on the following IRS forms: Form 1040, U.S. Individual Income Tax Return; Schedule C

(Form 1040), Profit or Loss from Business (Sole Proprietorship); Schedule E (Form 1040), Supplemental Income and Loss; Form 4562, Depreciation and Amortization; Form 1065, U.S. Partnership Return of Income; Form 1120, U.S. Corporation Income Tax Return; Form 1120S, U.S. Income Tax Return for an S Corporation; and the schedules and statements accompanying Forms 1065, 1120, and 1120S.

Any arrangements made by the parent, regardless of legality, that have the effect of reducing income or increasing business expenses may be disallowed for Guidelines calculation purposes if the arrangements were made primarily to reduce the amount of taxes or child support payable. Such arrangements may include, for example, attributing a portion of the business income to the current spouse, or setting up a mandatory retirement plan for members of a partnership, if there is evidence of intention to evade. (Consult the CSED staff attorney to evaluate evidence in these situations.)

Self-employment income is subject to regular income tax, and to the self-employment social security tax calculated on IRS Schedule SE.

If expenses exceed receipts, do not enter the negative amount in this line; see the instructions at line 2 for determining and entering allowed business losses.

Taxable self-employment income identified in the course of the Guidelines investigation but not reported on the parent's tax return should be listed on line 1h.

1c Pensions, social security. "Pension" income includes any periodic distributions from retirement plans before or after retirement; veterans' retirement benefits are included in this line. Social Security income includes benefits based on the earning record or disability of the parent, except for amounts received on behalf of a child of the calculation. Supplemental security income (SSI) benefits based on the disability of a child of the calculation are not included in the parent's income. Note that Social Security disability benefits usually are not subject to federal or state income tax.

1d Unearned income. Include dividends, interest, trust income, and annuities. Note that interest on out-of-state municipal bonds is not subject to federal income tax.

1e Imputed income. Determine imputed income according to the following RULE:

RULE 4 DETERMINATION OF INCOME FOR CHILD SUPPORT.....
(6) "Imputed income" means income not actually earned by a parent, but which will be attributed to the parent based on:
(a) the parent's earning potential if employed full-time;
(b) the parent's recent work history;
(c) occupational and professional qualifications;
(d) prevailing job opportunities in the community and earning levels in the community.
(7) Income should be imputed whenever a parent:
(a) is unemployed;

(b) is underemployed;
(c) fails to produce sufficient proof of income;
(d) has an unknown employment status; or
(e) is a full-time student whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is being determined, unless actual income is greater. If income to a student parent is imputed it should be determined at the parent's earning capacity based on a 40 hour work week for 13 weeks and a 20 hour work week for the remaining 39 weeks of a 12 month period. (This is an annual average of 25 hours per week.

(9) Income should not be imputed if any of the following conditions exist:
(a) the reasonable costs of child care for dependents in the parent's household would offset in whole or in substantial part, that parent's imputed income;
(b) a parent is physically or mentally disabled to the extent that the parent cannot earn income;
(c) unusual emotional and/or physical needs of a legal dependent require the parent's presence in the home.
(d) the parent has made diligent efforts to find and accept suitable work or to return to customary self-employment, to no avail; or
(e) the court or hearing officer makes a finding that other circumstances exist which make the imputation of income inequitable. However, the amount of imputed income shall be decreased only to the extent required to remove such inequity.

1f Earned income credit. In a calculation to **establish** a child support obligation, include the amount shown on the parent's tax return. If the tax return is not available or does not claim the credit, estimate the amount using the earned income credit table found in IRS Publication 596 ("Earned Income Credit") and the following assumptions:

(1) A qualifying child is one who
  - is a child of the calculation, or is an "other" child for whom an allowance is included in line 2a or 2b, AND
  - is under the age of 18 (or under the age of 24 if a student), AND
  - lives with the parent at least 183 days per year.

  If there are more than two qualifying children, use 2.

(2) "EIC Worksheet" income is the parent's gross income from lines 1a and 1b, and any other earned income from lines 1g and 1h, of (Guidelines) Worksheet A.

The estimate may be revised based on more detailed information provided by the parent using IRS Publication 596.

In a calculation to **modify** a child support obligation, if there are "subsequent children" (see instructions for lines 2a and 2b), two EIC amounts are required: one recognizing the subsequent children, and one not. In this situation the earned income credit from the parent's tax return can be used for only one of the two amounts; the other EIC amount must be estimated using a number of qualifying children that either recognizes or does not recognize the subsequent children, whichever method is not used in the tax return.

Enter the number of qualifying children used to determine the amount in this line in Section 2 of the Summary and Analysis page attached to Worksheet A.

If income is being imputed for the parent on line 1e, do not include an EIC amount for the imputed income.

1g Other taxable income. Include actual income not listed on lines 1a through 1f. Examples are rental income, royalties, alimony or spousal maintenance, unemployment benefits, and allowances and reimbursements exceeding actual expenses (see RULE under line 1 above). Note that unemployment benefits are not subject to state income tax.

Include net capital gains, if there is a history of capital gains in excess of capital losses, indicating the parent derives part of his or her income from ongoing investment activity.

Include earnings, profits, and contract proceeds that are received from activities other than employment, self-employment, business ownership, or one-time transactions.

Include non-cash benefits according to the following RULE:

RULE 4 DETERMINATION OF INCOME FOR CHILD SUPPORT ....
(2) Actual income includes: ....
(c) the value of non-cash benefits such as in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.

1h Other non-taxable income. Include workers' compensation benefits and disability benefits; the latter may include veterans' benefits. Also include student grants and similar income described in the following RULE:

RULE 4 DETERMINATION OF INCOME FOR CHILD SUPPORT ....
(2) Actual income includes: ....
(d) grants, scholarships, third party contributions and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payments intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support.

2 Allowable deductions. Include in lines 2a through 2k all required or necessary deductions from gross income **except** those described in the RULE below:

RULE 7 NON-ALLOWABLE DEDUCTIONS FROM INCOME
(1) Deductions which are not allowable under these rules include:
(a) payroll deductions for the convenience of the parent, such as credit union payments and savings;
(b) a net loss in the operation of a business or farm used to offset other income;

(c) investment losses outside the normal course of business;
(d) expenses incurred for the support of a spouse capable of self-support;
(e) payments for satisfaction of judgments against a parent related to the purchase of property for the parent's personal use;
(f) bankruptcy payments except to the extent that they represent debts for expenses which would otherwise be deductible; or
(g) a stepchild and associated costs.

Business operating losses may be deductible (at line 2k) if the business is the principal source of income for the parent. Investment losses may be deductible if the parent's main business is investments.

2a Ordered child support (for other children). In a calculation to **establish** a child support obligation, this is the total amount of any pre-existing support orders (court or administrative) against the parent for the parent's "other" children.

In a calculation to **modify** a child support obligation, the amount is the "establishment" amount from the paragraph above (where "pre-existing" means existing at the time of modification), except that if any of the pre-existing support orders was entered after the entry of the support order being modified, two amounts are calculated: one including the "subsequent" support order(s), and one not. (To determine which of the two amounts applies, see Modifications Involving Subsequent Children, PROCEDURES, earlier in this section.)

2b Allowance for other children (from Table 2). In a calculation to **establish** a child support obligation, this is the total allowance for all of the parent's "other" children not included in line 2a. The amount allowed for these children is the amount from the "other children" column in Table 2 (one-half the primary child support allowance), where the number of children used in the table equals the number of "other" children not included in line 2a; this number includes children who reside with the parent as well as children who do not.

In a calculation to **modify** a child support obligation, the amount is the "establishment" amount from the paragraph above, except that if any of the children was born after entry of the support order being modified, two amounts are calculated: one including the allowance for the "subsequent" child(ren), and one not. (To determine which of the two amounts applies, see Modifications Involving Subsequent Children, PROCEDURES, earlier in this section.)

2e,f Federal income taxes, state income taxes. The following RULE applies:

RULE 6 ALLOWABLE DEDUCTIONS FROM INCOME
(1) Allowable deductions from income include: ....
(d) the actual income tax liability based on tax returns. If no other information is available, use the tax tables which show the amount of withholding for a single person with one exemption;

If tax returns are available but the parent has not claimed the federal child tax credit, estimate the credit as in step 4b below, and enter on line 2e the parent's federal tax liability less the credit.

If taxes must be determined according to the tax tables, use the following steps:

1. Find the taxable income by adding all amounts on lines 1a, 1b, 1c, 1d, and 1g, and subtracting any nontaxable components (see line instructions).

2. Determine the filing status (married or single) and number of exemptions to which the parent is actually entitled. (Do not use the defaults, "single status" and "one exemption," unless there is no other information to apply.)

3. For the **state income tax**, find the amount from the state withholding table using the income, status, and exemptions in steps 1 and 2 above. Enter the amount in line 2f.

4. For the **federal income tax**, follow steps 4a through 4c below:

   a. Find the amount from the federal withholding table using the income, status, and exemptions in steps 1 and 2 above.

   b. Estimate the federal child tax credit to which the parent is entitled, based on available information, using the Child Tax Credit Worksheet published by the IRS. A "qualifying child" is one who
      - is under the age of 17 at the end of the tax year; AND
      - is the parent's son, daughter, stepchild, grandchild, or foster child; AND
      - is listed as a dependent on the parent's tax return.

      Absent more detailed or accurate information, the parent's "modified AGI" is the gross income from line 1i of Worksheet A.

   c. Subtract the child tax credit (step b) from the federal tax amount (step a). Enter the result on line 2e.

In Section 2 of the Summary and Analysis page attached to Worksheet A, enter the filing status, number of exemptions, and number of children for child tax credit used in steps 1 through 4 above.

2g Social security (FICA plus Medicare). This is the actual social security tax paid on income in lines 1a and 1b, from the parent's W-2 form and tax return, respectively. If documented amounts are not available, estimate the social security tax on income from line 1a at 7.65% (.0765) of income; estimate the social security tax on income from line 1b using IRS schedule SE.

Income listed on lines 1c through 1h is not subject to social security tax.

2h Retirement contributions/deferred compensation. Include only actual, mandatory contributions toward IRS-approved retirement and deferred compensation plans.

2i Required employment expense. The following RULE applies:

RULE 6 ALLOWABLE DEDUCTIONS FROM INCOME
(1) Allowable deductions from income include: ....
(f) actual unreimbursed expenses incurred as a condition of employment such as uniforms, tools, safety equipment, union dues, license fees, business use of personal vehicle and other occupational and business expenses;

2j Dependent care expense for persons other than children in this calculation, less dependent care tax credit. This amount is described by the following RULE:

RULE 6 ALLOWABLE DEDUCTIONS FROM INCOME
(1) Allowable deductions from income include: ....
(h) one-half reasonable expenses for items such as child care or in-home nursing care for the parent's legal dependents other than those for whom support is being determined, which are actually incurred and which are necessary to allow the parent to work, less federal tax credits. Do not deduct imputed child care expenses when imputing income;

For the federal dependent care tax credit use the amount claimed on the parent's tax return. If a tax return is not available or does not claim the credit, find the applicable tax credit from IRS Form 2441, Child and Dependent Care Expenses, using the best information available. "Earned income" may be estimated using the parent's gross income from lines 1a and 1b, and any other earned income from lines 1g and 1h, of (Guidelines) Worksheet A. A "qualifying person" is one who

- is (or would be) listed as a dependent on the parent's tax return (or is not listed on the return only because the parent signed an IRS form allowing the other parent to claim the child for tax purposes), AND
- is under the age of 13 at the end of the tax year, OR is physically or mentally unable to care for himself/herself.

The credit is limited to the amount calculated on the first $2400 of actual dependent care expenses for one child, and the first $4800 for two or more children. For Guidelines purposes **the credit subtracted in this line may not exceed the parent's tax liability in line 2e.**

Enter the number of dependents used to determine the tax credit for this line in Section 2 of the Summary and Analysis page attached to Worksheet A.

2k Other. Include extraordinary medical expenses; court-ordered payments other than child, spousal, or medical support; and student expenses, according to the following RULE:

RULE 6 ALLOWABLE DEDUCTIONS FROM INCOME
(1) Allowable deductions from income include: ....

(i) extraordinary medical expenses incurred by a parent to maintain that parent's health or earning capacity which are not reimbursed by insurance, employer, or other entity;
(j) court ordered payments except as excluded under ARM 37.62.111 (see line 2); *and*
(k) cost of tuition, books and mandatory student fees for a parent who is a full-time student as anticipated under ARM 37.62.106(7)(e) (see line 1e).

Student expenses described in the above RULE are deductible only in the amount by which they exceed any student loans. There is no deduction for repayment of student loans.

Also include any business losses deductible under the instructions in line 2.

4 Personal allowance for each parent. Use the amount from the table, unless the parent lives in Alaska or Hawaii; then use the federal poverty guideline amount for that state multiplied by 1.3.

6 Minimum contribution. The parent qualifies for the minimum contribution (instead of a proportional share of the children's needs and standard of living), if either of the following applies:

(1) Income After Deductions (line 3)
LESS Personal Allowance (line 4) ≤ $0.

In this case the minimum contribution is a percentage of Income After Deductions from Worksheet C.

(2) Income After Deductions (line 3)
LESS Personal Allowance (line 4) ≤ 12% of Income After Deductions

In this case the minimum contribution is 12% of Income After Deductions.

The minimum contribution is not the same as the final child support obligation, and the calculation does not end with the determination that the parent qualifies. The minimum contribution amount is used at two later points in the calculation to determine (at lines 7-9) the parental share for purposes of medical support, and (at lines 22-24) the final child support obligation after any payment of expenses for the children's supplemental needs.

12 Supplement to primary allowance. These amounts represent the additional needs of the children in certain specified areas; they are limited to amounts actually paid by either of the parents or the custodian. Although the amounts entered in lines 12a through 12d are aggregated for purposes of determining total need, it is also necessary to identify the individual amounts paid by each parent for each child. These amounts are used later in the calculation (line 23, and Worksheet B, part 1, lines 3, 9,

and 13). For documentation purposes, further breakdown by type of expense may also be required.

12a Child day care costs less dependent care tax credit. This amount is described in the following RULE:

RULE 12 SUPPLEMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE
(1) The primary child support allowance is supplemented by:
(a) reasonable child care costs incurred by a parent for children of the calculation as a prerequisite to employment. The child care expense is reduced by the federal dependent care tax credit;

Determine the federal dependent care tax credit using the instructions for line 2j (Worksheet A); enter the number of children used to calculate the credit in Section 2 of the Summary and Analysis page attached to Worksheet A.

12b Child health insurance premium. This amount is limited to the amount the parent is **actually paying** for coverage of the children of the calculation. Proof of payment can be either (1) proof of current coverage or (2) verification from the insurance carrier that the parent has paid a premium with the intent of enrolling the children. The cost of "prerequisite" coverage (coverage the parent is required to purchase before or with any coverage for children of this calculation) is not included in this amount.

If the cost of children-only coverage is not identified separately by the insurance plan, derive the amount by subtracting the cost of a parent-only package from the cost of the parent-child package (or use some other reasonable method). Then divide the children-only cost by the number of children covered to determine the specific cost for each child, and multiply by the number of children of the calculation who are covered.

12c Child extraordinary medical expenses. Include only unreimbursed expenses. This amount is not limited to costs for catastrophic accidents or illnesses, but may include ongoing prescriptions or treatments if they represent significant expenses beyond the normal costs of living. For large medical debts the amount entered is one year's payments, not the entire amount due.

12d Other. This amount includes all other special needs of the children as determined by the circumstances of the case. Generally, special needs are limited to things such as special schooling, care, equipment, or transportation that are beyond the ordinary needs of most children.

18a Long distance parenting adjustment. Enter the amount from Worksheet D.

18b Other adjustments to income available for SOLA. This line is for expenses that
- relate to special conditions in the case;
- are not appropriate earlier in the calculation (because they do not relate to a particular line, or because they would have an unfair effect on parental shares (line

9) or on the extent to which the children's needs are met (line 13 versus line 7), based on the facts of the case);
- correspond dollar-for-dollar with actual expenses incurred by the parent, and
- if not included, would result in a determination that is unjust or inappropriate in the particular case.

Amounts entered in this line are considered variances from the Guidelines for purposes of the support order (see Variances, POLICY, this section).

Enter the amount of the actual expense or the net amount available for SOLA (line 17 less line 18a), whichever is less. Describe the special conditions and the basis for allowing the expense in the COMMENTS line at the end of Worksheet A.

23 Credit for payment of expenses. For each parent break out the amount the parent actually pays toward the total expenses listed on line 12. (Note that in a third-party case the obligor parent's credit on this line may be less than the total on ine 12, if the custodian pays some of the supplemental expenses.)

25 Combination parenting determination. To complete this portion of the worksheet first determine whether "combination parenting" applies.

In a two-parent case (both parents are included in the calculation) combination parenting applies in either of the following two situations:
(1) Any of the children spend more than 110 days with one parent **and** more than 110 days with the other parent.
(2) One child of the calculation spends 110 days or less with one parent and another child of the calculation spends 110 days or less with the other parent.

In determining days spent with each parent, the following RULE applies:

RULE 18 PAYMENT OF MONTHLY SUPPORT AMOUNT IN COMBINATION PARENTING ARRANGEMENTS....
(3) For the purposes of this rule, a day is when a child spends the majority of a 24 hour calendar day with or under the control of a parent. This assumes that there is a correlation between time spent and resources expended for the care of the child. Reference can be made to the residential schedule in the parenting plan ordered under 40-4-234, MCA.

If combination parenting applies, complete only the child's name and columns A and B in line 25; then go to Worksheet B to determine the amounts in columns C and D. Return to line 25 to enter the amounts for each child, and the totals for columns C and D; proceed to line 26.

If combination parenting does not apply in a two-parent case, complete all of the columns in line 25 (for columns C and D follow the instructions printed on the worksheet after "YES," then enter the total in line 25i).

In a one-parent case (only one parent is considered in the calculation because there is a third-party custodian) "combination parenting" does not apply. Complete only the child's name and column C or D (depending on which parent is the obligor in this calculation) for each child, leaving columns A and B blank. To determine the amount in column C or D for each child, divide the obligation on line 24 by the number of children on line 10. Enter a total for the appropriate column on line 25i.

26 Annual transfer payment. If combination parenting (Worksheet B) does not apply, the amount in this line should equal the amount in line 24 for the noncustodial parent. If combination parenting does apply, the amount will be the difference between the two parents' **adjusted** obligations (for combination parenting), not the difference between the line 24 amounts.

NOTE: If in a combination parenting situation this line shows a transfer amount payable by the CSED's obligee to the CSED's obligor (the obligee's total obligation in line 25i is greater than the obligor's), the guidelines determination is discontinued: the CSED does not establish an order against a parent who has applied for services as the custodian of the children, or in favor of a parent who has applied for services as the parent owing support.

27 Total monthly transfer payment. This is the monthly payment for all the children. The support amount for each child is determined in the Summary and Analysis page attached to Worksheet A.

COMMENTS. This "line" is used to list the following information for each parent:

(1) **A summary of how income was determined within the Guidelines.** Identify the different types of actual income included in the parent's total income on line 1i (for example, wages from full-time employment, income from rental property, earned income credit, disability benefits, etc.). If applicable explain why and how income was imputed, averaged, or projected. Identify any income the parent actually received that was not included in the calculation, and explain why. For self-employment income describe the parent's gross receipts, and the business expenses allowed; also indicate whether any income or expenses claimed on the parent's tax return were increased or disallowed for Guidelines purposes, and give the basis for the determination.

Also describe any deductions from income other than standard income taxes, social security, and mandatory employer deductions. Give the data or assumptions used to determine any tax credits.

(2) **Any supplements to the children's primary needs other than day care and health insurance.** Describe any supplements listed on lines 12c and 12d; if necessary, explain why the supplements were allowed.

(3) **Any rebutted presumptions.** For any amount entered in lines 1 through 18a that differs from the prescribed Guidelines amount, explain how the presumption is rebutted in this situation. Most of these deviations will be identified in items (1) and (2) above. (See Rebuttable Presumption, POLICY, this section.)

(4) **Any variances from the Guidelines.** If the calculation includes an amount entered in line 18b, or if the CSED intends to order the obligor to pay an amount different from the final support amount (transfer payment) shown on line 27, explain why a variance from the Guidelines is required; describe the adjustment to the income available for SOLA or to the "bottom line," and state how the adjustment was derived. (See Variances, POLICY, this section.)

Enter in this (COMMENTS) line the transfer payment that would have applied without the variance. If the variance occurred at line 18b, it will be necessary to perform a second calculation to determine this amount.

Variances may be granted at the "bottom line" (final support amount) in cases where an entry in line 18b is not appropriate (see instructions for line 18b).

CAUTION: An adjustment to the bottom line may (depending on the size of the adjustment) reduce the final support amount to a point where the children's primary and supplemental needs are not met. In these situations the effect of the adjustment on the children's needs must be taken into account in determining whether the variance is in the best overall interests of the child.

Situations appropriate to bottom-line variances may include the following (subject to the above CAUTION):

> The transfer amount is reduced in consideration of a parent's overall financial condition (extreme situation), where the amount of the reduction does not correspond to a specific expense amount.

> A variance for the amount of a specific expense is granted, but the total amount cannot be absorbed at line 18b.

> The parties agree on an amount that is different from the calculated transfer amount, after being informed of the calculated amount.

If a stipulation/agreement is proposed, the following RULE also applies:

RULE 2 REBUTTABLE PRESUMPTION....
(5) Child support may vary from the guidelines based on a stipulation or agreement of the parties only if the stipulation or agreement meets the following criteria:
(a) it is in writing executed by the parties or is entered by a court or administrative proceeding;

(b) the parties have signed the stipulation or agreement free of coercion;
(c) it contains specific justification as to why application of the guidelines is unjust or inappropriate; and
(d) it contains a statement of the amount of support that would have been appropriate under the guidelines without the variance.

(5) **Any significant change in circumstances (affecting the calculation) that is anticipated within the next 18 months.** Describe the anticipated change, and calculate and list the amount that will be payable when and if the change occurs. (Note that both the current and the future amount may be based on standard calculations, or may include rebutted presumptions or variances.) Anticipated changes may include, for example, a change in earning ability when the parent completes a degree program; a change in the personal allowance when the parent is transferred to Alaska; or a change in day care expenses when a child starts school.

(6) **If applicable, a brief statement that the case involves a third-party (non-parent) custodian.** Also enter in this (COMMENTS) line the required disclaimer regarding the other parent's obligation (see Cases Involving Third-Party Custodians, PROCEDURES, this section).

(7) **Any other special circumstances of the case.** List any non-standard information not included in (1) through (6) above that was considered in determining the support amount.

INSTRUCTIONS FOR COMPLETING WORKSHEET D

Line Description/Instructions

1 Annual mileage driven. Long-distance parenting is defined by the following RULE:

RULE 15 LONG DISTANCE PARENTING ADJUSTMENT
(1) Long distance parenting is any travel by a parent or child to attain the goals of the parenting plan. A long distance parenting adjustment is allowed when travel by a parent or child exceeds 2,000 miles in a calendar year.

The "parenting plan" is a plan incorporated in the divorce decree that contains a residential schedule specifying the periods of time the child will spend with each parent, including holidays, vacations, etc. The requirement for a parenting plan was adopted by the Legislature in 1997; for divorce decrees entered before the requirement was in effect, travel for long distance parenting is estimated based on recent visitation and custody experience, adjusted to reflect any changes anticipated for the coming twelve months.

Mileage to "exercise long-distance parenting" means mileage incurred by the parent to transport the child to or from the other parent or the custodian according to the child's residential schedule.

4 Annual transportation cost other than mileage. Non-automobile transportation must be related to the child's residential schedule found in the parenting plan, or based on recent visitation and custody experience if there is no parenting plan. This amount may include costs incurred to comply with the regulations of the carrier with respect to children traveling alone.

April 1, 2004

Guidelines Tables Bulletin

Section CS 404.2 contains the tables needed to apply the Montana Child Support Guidelines. The CSED updates these tables annually to incorporate the latest U.S. poverty guidelines (Tables 1 and 2) and IRS business mileage rate (Table 3). The tables currently in effect are dated April 1, 2004.

MONTANA CHILD SUPPORT GUIDELINES TABLES, EFFECTIVE APRIL 1, 2004

TABLE 1

PERSONAL ALLOWANCE PER YEAR
(ARM 37.62.114)

FOR EACH PARENT	12,103

TABLE 2

PRIMARY CHILD SUPPORT ALLOWANCE PER YEAR
(ARM 37.62.121)

ANNUAL ALLOWANCE FOR OTHER CHILDREN
(ARM 37.62.110)

Number of Children	Allowance for children of this calculation (enter on line 11, worksheet A)	Allowance for "other children" (enter on line 2b worksheet A)
1	3,631	1,815
2	6,052	3,026
3	8,472	4,236
4	9,682	4,841
5	10,893	5,446
6	12,103	6,052
7	13,313	6,657
8	14,524	7,262

TABLE 3

LONG DISTANCE PARENTING ADJUSTMENT
(ARM 37.62.130)

IRS Business Mileage Rate: $0.375 (37.5¢)
Standard Expense: $750

SUPERSEDES

[new section]

REFERENCES

MCA 40-5-209; ARM 37.61.101 through 148.

POLICY

Applicability. The policies and procedures in this section apply to guidelines calculations performed in third-party cases only. For purposes of this section a "third-party case" is a case where, for the children for whom support is being established, at least one of the obligees is not a parent. In cases where the only obligee is a parent, section CS 404.1, Child Support Guidelines applies.

Terminology--"Third-Party Children." For purposes of this section children in the case who are attached on SEARCHS to a non-parent obligee are referred to as "children in third-party care" or "third-party children." Children attached to a parent obligee are referred to as "non-third party children."

Guidelines Adaptation. The existing Montana Child Support Guidelines, contained in the Administrative Rules of Montana, do not address third-party cases as defined above. The Guidelines assume each child of the calculation resides primarily with a parent, and that the support amount for each child will be owed to a parent. In a third-party case these assumptions are not valid; amounts must be calculated for support due the third party. Absent specific statutes or administrative rules for determining support amounts in these cases, the CSED must use its discretion to adapt the Guidelines, identifying and applying the most appropriate method for calculating support in each case.

CSED Methods. The two methods described in this section are intended to guide the CSED's discretion in determining support amounts in third-party cases; they are included in the CSED policy and procedures manual solely to ensure a uniform approach to the calculation of support by CSED caseworkers. The methods are not prescribed by rule or statute, and their use by district courts, parents or their attorneys, or any other persons involved in determining support amounts is entirely discretionary.

Contesting the Use or Outcome of a Method. The CSED uses the methods in this section to determine support amounts at the caseworker level; any party to the case may contest the method used or the amounts produced, by requesting a hearing on the establishment or modification action under the procedures in unit CS 401 or CS 408. At the hearing the CSED Administrative Law Judge (ALJ) determines the support amounts based on the evidence presented, including any alternative method proposed by the contestor. The ALJ may take official notice of the CSED policy and procedures manual and, more specifically, of this section and the applicable method presented here for determining support. A party is entitled to an opportunity to rebut the officially noticed method before the matter is resolved by a final decision or order of the ALJ.

Interim Methods. The methods described in this section were developed as experimental, interim procedures for determining support amounts in third-party cases. The CSED may issue changes to this section according to experience gained in applying the methods. The CSED may also incorporate these or other methods for determining support owed to third parties in the Montana Child Support Guidelines, in conjunction with the next periodic review of the Guidelines under MCA 40-5-209. Problems, discrepancies, or omissions found in the methods should be reported to the CSED Guidelines Liaison for research and tracking.

Principles of Third-Party Calculations. In determining the appropriate child support amount in third-party cases, the CSED relies on the following principles to make adjustments to the standard calculation described in section CS 404.1:

(1) **Two obligations.** Each parent has an obligation of support for the children in third-party care. Therefore, the calculation should preserve both parents' individual obligations for these children. The amount of each parent's gross annual obligation determined in Worksheet A is the starting point for determining that parent's final obligation to the third party, according to the adjustments in (2) through (6) below.

(2) **Payment of expenses.** As in the standard calculation, the supplement to the children's primary allowance should include any allowed expenses paid by the third party. Allowed child day care expenses are restricted to costs that allow the third party to earn income or receive medical services. Because the third-party obligee has no legal obligation to support the children, the calculation should not include a credit against either parent's support obligations for expenses paid by the third party.

(3) **Parent visitation.** For each child in third-party care the calculation should take into account any visitation between the child and a parent; days spent with the parent should reduce that parent's obligation for the child. Further, the other parent's obligation for the child should be divided proportionally between the third party and the visited parent.

NOTE: Visitation Defined. For purposes of this section "visitation" means any days a third-party child spends with a parent during the year, including consecutive days that form an extended period of time. Note that visitation may include situations where the child appears to live or reside with the parent or to be in the parent's custody for a period of time.

(4) **Child-specific expenses.** When the calculation includes non-third party children, or when parent visitation with third-party children applies (see (3) above), the calculation should also take into account any differences in expenses among any of the children in the calculation; differences in expenses should be reflected in differences in a parent's obligations for the individual children of the calculation.

(5) **Children with no transfer payment.** The calculation must include all of the children in the biological unit regardless of whether those children are receiving CSED services. This includes children
- who live with parents who are living together,
- who live with the only parent available for support (for example, the other parent is deceased, or is an unidentified father),
- for whom the custodian is unknown (for example, a runaway child), or
- whose non-TANF custodian has not applied for services.

Although there will be no transfer payments owed for these children, it is necessary to include them in the calculation to fairly determine the support amounts for the children (third-party and non-third party) who are receiving services.

(6) **Final obligations and transfer payments.** The calculation should produce a final obligation to the third party for each parent. In cases where any of the children of the calculation spends one or more days with a parent, the calculation should also produce a final transfer payment between the parents. The transfer payment should be the final offset between
- Mother's total obligation to Father for all the children, including those in third-party care where applicable (see (3) above), and
- Father's total obligation to Mother for all the children, including those in third-party care where applicable (see (3) above).

Methods for Adapting the Calculation. To implement the principles described above the CSED adapts the standard calculation using Method I or Method II below, depending on the facts of the case concerning residence, visitation, and supplemental expenses.

Method I: Worksheet A. Method I is used when the facts in either (1) or (2)below apply:

(1) All of the children reside with the third-party obligee **and** none of the children has any visitation with a parent.

(2) Some of the children reside with the third-party obligee **and** none of the third-party children has any visitation with a parent; the other children reside with a parent **and** there is no combination parenting for any of the non-third party children **and** there is no difference in expenses among any of the children in the calculation.

Except in one-obligation cases (see NOTE below), this method requires two standard calculations, one using 255 days or more spent with the mother for all the children, and the other using 255 days or more spent with the father for all the children. Both resulting worksheets are adjusted to designate the portion of the transfer payment owed to the third party, even if the CSED is establishing the support amount for only one of the parents.

NOTE: One-Obligation Cases. For purposes of determining support, a case includes only one support obligation if (1) the parents have a "joint" obligation (they are married and living together), or (2) one of the parents has a "sole" obligation (the other parent is deceased or unknown, or for some other reason the parent's information cannot be used in the calculation).

Method II: Worksheet F. Method II is used when the facts in (1) or (2) for Method I do not apply. The method uses a special Worksheet F to adjust the parents' gross annual obligations determined in Worksheet A according to
- the amount of any visitation between parents and third-party children;
- any differences in expenses determined in Worksheet B among all of the children; and
- the extent of any combined parenting arrangements in Worksheet B for non-third party children.

Worksheet F also produces the final obligations to the third party and any applicable total transfer payment between the parents. (A sample copy of Worksheet F is attached at the end of this section.)

Customized Calculations. In unusual cases involving facts not contemplated by Method I or Method II above (for example, cases with more than one third-party obligee), the calculation should be customized as necessary, using the principles contained in this section and in consultation with the CSED Guidelines Liaison.

PROCEDURES--INSTRUCTIONS FOR ADAPTING THE CALCULATION

LIMITATIONS: The following instructions are intended for the use of CSED caseworkers performing the support calculation. The instructions specify only the required changes; standard instructions given in section CS 404.1, Child Support Guidelines, for all other lines in the calculation continue to apply.

FORMATTING NOTE: Where any step below calls for the caseworker to "strike out" or "write in" text or amounts on a guidelines worksheet, the caseworker may instead adjust the SEARCHS-generated document electronically by deleting or inserting the material before printing the worksheet.

RESPONSIBILITY FOR IDENTIFYING THIRD-PARTY INFORMATION: If any parent or custodian raises, or if the caseworker is aware of, facts or issues indicating parent visitation with a third-party child, or supplemental needs paid by a third-party custodian, the caseworker must investigate the information and address it in the calculation. EXCEPTION: Calculations should not include visitation or supplemental needs for children in paid substitute-care placements.

METHOD I: WORKSHEET A

✲ Use this method when one of the following conditions applies:

(1) All of the children reside with the third-party obligee **and** none of the children has any visitation with a parent.

(2) Some of the children reside with the third-party obligee **and** none of the third-party children has any visitation with a parent; the other children reside with a parent **and** there is no combination parenting for any of the non-third party children **and** there is no difference in expenses among any of the children in the calculation.

1. Generate two complete SEARCHS calculations according to the instructions in steps 2 and 3, then proceed to step 4.
2. FIRST CALCULATION--CHILDREN SHOWN WITH MOTHER: Complete the input screens on SEARCHS as for a standard (parent obligee only) calculation, EXCEPT for the fields described below.

a. DAYS SPENT: For the third-party children enter 365 days spent with Mother. For any non-third party children,
- if the children reside with the mother, enter the number of days actually spent with Mother and the number of days actually spent with Father.
- if the children reside with the father, enter 365 days spent with Mother.

b. TAX INFORMATION: For each parent enter the filing status, number of exemptions, and number of children claimed for child and earned income credits according to the best available information. These entries should be determined independently of the days-spent entries in step 2a, and should reflect the true situation.

c. SUPPLEMENTAL EXPENSES: Enter all applicable expenses paid by the parents or by the third party (see POLICY, Payment of Expenses); third-party expenses should be entered as paid by Mother. Do not select the day care tax credit for third-party children.

d. ALL OTHER FINANCIAL INFORMATION: For each parent enter all other information related to income, deductions, other children, and long-distance parenting or other adjustments to SOLA income, as for a standard calculation.

e. COMMENTS: Enter the following comment, to appear at the end of the calculation; choose insert A, B, or C depending on the **actual residence** of any non-third party children:

> "Although line 25 indicates the children all reside primarily with Mother, *[insert A, B, or C]*. The entry on line 25 is necessary to accommodate the computer program and does not affect Father's obligation on line 24, in this instance.

This calculation shows the monthly transfer payment(s) owed by Father. A companion calculation, printed separately, shows the monthly transfer payment(s) owed by Mother."

INSERT A (no non-third party children):
"the children actually reside with a third party."

INSERT B (non-third party children reside with Mother):
"[third-party children's names] actually reside with a third party."

INSERT C (non-third party children reside with Father):
"[non-third party children's names] actually reside primarily with Father, and [third-party children's names] actually reside with a third party."

3. SECOND CALCULATION--CHILDREN SHOWN WITH FATHER: Complete the input screens on SEARCHS exactly as for the first calculation (step 2), except as instructed in 3a through 3c below.

NOTE: Identical Financial Information. For this method (I) it is essential that for each parent the financial information used in the second calculation be the same as the financial information used in the first. **This includes tax information.** Even though the second calculation shows the children living with the father instead of the mother, the tax exemptions and tax credits for each parent must remain the same, to ensure that the parents' respective gross annual obligations will be the same as in the first calculation.

a. DAYS SPENT: For the third-party children enter 365 days spent with Father. For any non-third party children,
   - if the children reside with the father, enter the number of days actually spent with Father and the number of days actually spent with Mother.
   - if the children reside with the mother, enter 365 days spent with Father.

b. SUPPLEMENTAL EXPENSES: Enter all applicable expenses paid by the parents or by the third party (see POLICY, Payment of Expenses); third-party expenses should be entered as paid by Father. Do not select the day care tax credit for third-party children.

c. COMMENTS: Enter the following comment, to appear at the end of the calculation; choose insert A, B, or C depending on the **actual residence** of any non-third party children:

"Although line 25 indicates the children all reside primarily with Father, *[insert A, B, or C]*. The entry on line 25 is necessary to accommodate the computer program and does not affect Mother's obligation on line 24, in this instance.

This calculation shows the monthly transfer payment(s) owed by Mother. A companion calculation, printed separately, shows the monthly transfer payment(s) owed by Father."

INSERT A (no non-third party children):
"the children actually reside with a third party."

INSERT B (non-third party children reside with Father):
"[third-party children's names] actually reside with a third party."

INSERT C (non-third party children reside with Mother):
"[non-third party children's names] actually reside primarily with Mother, and [third-party children's names] actually reside with a third party."

4. Adjust the two Worksheets A resulting from the calculations in steps 2 and 3 as follows:

   a. Lines 23 and 24: If any supplemental expenses were actually paid by the third party, strike out the SEARCHS amount on line 23 that includes the third party's expenses (this will be Mother's amount in the first calculation, Father's amount in the second calculation–see steps 2c and 3b). Write in the amount for expenses actually paid by the parent, and correct the resulting net annual obligation for that parent on line 24.

   b. Line 27: If any non-third party children are included on line 25, on the applicable calculation strike out the total monthly transfer payment (line 27) owed by the parent with whom the children primarily reside; write in "see next page" beside the stricken amount.

      For example, suppose the non-third party children actually reside with Mother. In the first calculation (children shown with Mother) leave line 27 as is. In the second calculation (children shown with Father) strike out Mother's total monthly transfer payment on line 27, and write in "see next page."

   c. Summary and Analysis, Per-Child and Total Amounts: For each non-third party child in Section 1, lines a through h, on the applicable calculation strike out the annual and monthly line obligations of the parent with whom the child actually primarily resides. Adjust the parent's monthly amount on the total line.

   d. Summary and Analysis, Obligation Statements: Make the necessary adjustments to the SEARCHS statements in Section 1 on each calculation. The final corrected statements should read as follows (omit the individual names of the children if all the children reside with the third party):

      FIRST CALCULATION--CHILDREN SHOWN WITH MOTHER:
      "Father owes third party $____ per month, $____ per child per month for [names of children]."

      [If applicable:] "Father owes Mother $____ per month, $____ per child per month for [names of children]."

SECOND CALCULATION--CHILDREN SHOWN WITH FATHER:
"Mother owes third party $____ per month, $____ per child per month for [names of children]."

[If applicable:] "Mother owes Father $____ per month, $____ per child per month for [names of children]."

A sample calculation for Method I is given at the end of this section.

5. VARIATION: INTACT FAMILIES, NOT MARRIED: Special instructions apply for cases where the parents of the children in the calculation are living together and not married.

   a. DAYS SPENT:
      - In the first calculation enter 365 days spent with Mother for all the children.
      - In the second calculation enter 365 days spent with Father for all the children.

   b. Enter the tax information and all other financial information as in steps 2 and 3 above. Enter any supplemental expenses paid by the third party as in steps 2 and 3 above; enter any supplemental expenses paid by either parent as paid 50% by Mother and 50% by Father.

   c. Enter the following comments to appear at the end of the calculations (omit the references to both parents if all the children reside with the third party):

      FIRST CALCULATION:
      "Although line 25 indicates the children all reside primarily with Mother, [non-third party children's names] actually reside with both parents, and [third-party children's names] actually reside with a third party. The entry on line 25 is necessary to accommodate the computer program and does not affect Father's obligation on line 24, in this instance.

      This calculation shows the monthly transfer payment owed by Father. A companion calculation, printed separately, shows the monthly transfer payment owed by Mother."

      SECOND CALCULATION:
      "Although line 25 indicates the children all reside primarily with Father, [non-third party children's names] actually reside with both parents, and [third-party children's names] actually reside with a third party. The entry on line 25 is necessary to accommodate the computer program and does not affect Mother's obligation on line 24, in this instance.

      This calculation shows the monthly transfer payment owed by Mother. A companion calculation, printed separately, shows the monthly transfer payment owed by Father."

   d. Lines 23 and 24: If any supplemental expenses were actually paid by the third party, strike out the SEARCHS amount on line 23 that includes the third party's expenses (this will be Mother's amount in the first calculation, Father's amount in the second calculation–see steps 2c and 3b). Write in the amount for expenses actually paid by the parent, and correct the resulting net annual obligation for that parent on line 24.

e. Line 27: If any of the children of the calculation reside with the parents, on both calculations strike out the total monthly transfer payment, and write in "see next page" beside the stricken amount.

f. Summary and Analysis: On both calculations strike out the annual and monthly line obligations for any children who reside with the parents, and adjust the total obligation accordingly; adjust the SEARCHS statements to read, "Father owes third party...." and "Mother owes third party....".

6. VARIATION: JOINT OBLIGATION (INTACT FAMILY, MARRIED):

   a. (This variation requires only one calculation.) Generate a complete SEARCHS calculation according to the instructions in step 6b, then proceed to step 6c.

   b. Complete the input screens on SEARCHS as for a standard (parent obligee only) calculation, EXCEPT for the fields described below.

      i. DAYS SPENT: Enter 365 days spent with Mother for all the children.

      ii. SUPPLEMENTAL EXPENSES: Enter all applicable expenses paid by the parents or by the third party (see POLICY, Payment of Expenses). Enter the parents' expenses under Father, and any third-party expenses under Mother.

      iii. ALL OTHER FINANCIAL INFORMATION: Combine both parents' amounts, at each line, for income, deductions, and SOLA adjustments; enter the combined amounts under Father, and enter $0 under Mother.

      iv. PERSONAL ALLOWANCE: Enter $0 for Mother; enter a revised amount for Father calculated at the poverty guidelines amount for a two-person household, times 130%. (The poverty guidelines amounts can be found in the Hardship Bulletin at section CS 510.5.)

      v. COMMENTS: Enter the following comment, to appear at the end of the calculation (omit the references to "both parents" if all the children reside with the third party):

      "Although line 25 indicates the children all reside primarily with Mother, [non-third party children's names] actually reside with both parents, and [third-party children's names] actually reside with a third party. The entry on line 25 is necessary to accommodate the computer program and does not affect the parents' obligation on line 24, in this instance.

"The parents have a joint obligation for the children; to determine the joint amount the calculation combines Mother's and Father's income, deductions, and expenses in the single column labeled "Parents."

c. Adjust Worksheet A resulting from the calculation in step 6b as follows:

   i. Strike out the column headings "Mother" and Father" throughout Worksheet A and the Summary and Analysis; write in the heading "Parents" in the Father's column.

   ii. Line 23: If any supplemental expenses were actually paid by the third party, strike out the credit for these expenses (Mother's amount--see step 6b(ii)) on line 23.

   iii. Line 27: If any children of the calculation reside with the parents, strike out the parents' total monthly transfer payment at line 27, and write in "see next page" next to the stricken amount.

   iv. Summary and Analysis: Strike out the annual and monthly line obligations for any children who reside with the parents, and adjust the total obligation accordingly. Adjust the SEARCHS statement to read, "Mother and Father jointly owe third party....."

7. VARIATION: SOLE OBLIGATION (ONE PARENT NOT AVAILABLE FOR SUPPORT):

   a. (This variation requires only one calculation.) Generate a complete SEARCHS calculation according to the instructions in step 7b, then proceed to step 7c.

   b. Complete the input screens on SEARCHS as for a standard (parent obligee only) calculation, EXCEPT for the fields described below.

      i. DAYS SPENT: Enter 365 days spent with the parent who does not have the obligation (the missing parent), for all the children.

      ii. SUPPLEMENTAL EXPENSES: Enter all applicable expenses paid by the parent or by the third party (see POLICY, Payment of Expenses). Enter the parent's expenses under the parent who has the obligation, and any third-party expenses under the parent who does not have the obligation.

      iii. ALL OTHER FINANCIAL INFORMATION: Enter the income, deduction, and SOLA adjustment amounts for the parent who has the obligation; enter $0 for the other parent.

      iv. COMMENTS: Enter the following comment, to appear at the end of the calculation (omit the references to the obligated parent if all the children reside with the third party):

"Although line 25 indicates the children all reside primarily with [non-obligated parent], [non-third party children's names] actually reside with [obligated parent], and [third-party children's names] actually reside with a third party. The entry on line 25 is necessary to accommodate the computer program and does not affect the parent's obligation on line 24, in this instance."

c. Adjust Worksheet A resulting from the calculation in step 7b as follows:

   i. Line 23: If any supplemental expenses were actually paid by the third party, strike out the credit for these expenses (non-obligated parent's amount--see step 7b(ii)) on line 23.

   ii. Line 27: If any of the children of the calculation live with the parent who has the obligation, strike out the parent's total monthly transfer payment, and write "see next page" beside the stricken amount.

   iii. Summary and Analysis: Strike out the annual and monthly line obligations for any children who live with the parent who has the obligation, and adjust the total obligation accordingly. Adjust the SEARCHS statement to read, "[Parent who has obligation] owes third party... ."

METHOD II: WORKSHEET F

* Use this method when conditions for Method I do not apply--that is, when
  - any of the third-party children has visitation with a parent; or
  - some of the children live with a parent and any of the children of the calculation have different supplemental expenses; or
  - combined parenting applies for any non-third party children.

1. Complete the input screens on SEARCHS as for a standard (parent obligee) calculation, EXCEPT for the fields described in 1a through 1c below.

   a. DAYS SPENT: For any non-third party child enter the number of days spent with each parent according to the instructions for a standard calculation.

   For each child in third-party care enter the number of days spent with each parent in such a way that SEARCHS will automatically generate a Worksheet B.(Worksheet B is generated whenever the complete SEARCHS entry for all the children in the calculation reflects a combined parenting situation. Combined parenting means that for **each parent**, one or more children of the calculation spend at least **111 days** with that parent.) If the entries for the non-third party children already require a Worksheet B, the 365 days for each third-party child can be assigned randomly.

   b. SUPPLEMENTAL NEEDS: Enter all applicable expenses paid by either of the parents or by the third party. Expenses paid by the third party may be entered under either

Mother or Father; do not select the day care tax credit for day care expenses paid by the third party.

c. COMMENTS: Enter the following COMMENT, to appear at the end of the calculation:

"Information in lines 23 through 27 above, in Section 1 of the Summary and Analysis on the next page, and in Part 2 of Worksheet B, assumes all of the children reside primarily with a parent. In this calculation [names of third-party children] actually reside primarily with a third party. Corrected information, generated by overriding the computer program for the third-party children, is shown in Worksheet F."

2. Print out Worksheets A and B. On Worksheet A immediately below line 22, write in "GO TO WORKSHEET B," and strike out lines 23 through 27.

3. On the printed Summary and Analysis strike out the entire Section 1 containing SEARCHS-generated amounts; leave Section 2 (tax data) as printed.

4. On the printed Worksheet B, Part 1, hand-correct the amounts on lines 14 and 23 as to remove any credit for payment of expenses by the third party; strike the corresponding line instructions beginning, "The total must match...". Hand-correct the amounts on lines 15 and 24 as applicable.

5. On the printed Worksheet B strike through the entire Part 2 for each child in third-party care. For any non-third party children, strike out the instruction at Part 2, line 12 beginning, "Enter here...".

   At the end of Worksheet B, Part 2 write in, "GO TO WORKSHEET F."

   NOTE: In third-party cases Part 2 of Worksheet B will be incorrect for all children in third-party care because of the SEARCHS "DAYS SPENT" limitations.

6. Complete Worksheet F, Parts 1 and 2, according to the instructions printed on the form.

A sample calculation for Method II is given at the end of this section.

7. VARIATION: INTACT FAMILY, NOT MARRIED: Where the parents of the children in the calculation are living together but not married, follow the instructions for this method (II), steps 1 through 6, except as described below.

   a. DAYS SPENT: Any child of the calculation may be assigned to either parent. The complete "days spent" entry must be completed in such a way that SEARCHS will automatically generate a Worksheet B (see step 1a for an explanation of the Worksheet B requirement).

b. SUPPLEMENTAL NEEDS: Enter any supplemental expenses paid by either parent as paid 50% by Mother and 50% by Father.

c. COMMENTS: Enter the following COMMENT, to appear at the end of the calculation:

"Information in lines 23 through 27 above, in Section 1 of the Summary and Analysis on the next page, and in Part 2 of Worksheet B, assumes each of the children resides with one parent. In this calculation [names of non-third party children] actually reside with both parents, and [names of third-party children] actually reside with a third party. Corrected information, generated by overriding the computer program for these facts, is shown in Worksheet F."

d. VISITATION: Any day that a child in third-party care spends with either or both parents is counted as one day of visitation. The total number of days of visitation for the year should be divided equally between the parents for purposes of the "days spent" entry in Part 1 of Worksheet F.

e. AMOUNTS OWED BETWEEN PARENTS: Strike out all of Worksheet B, Part 2. On Worksheet F, Part 2, omit any amounts owed between parents.

8. VARIATION: JOINT OBLIGATION (INTACT FAMILY, MARRIED): Where the parents of the children in the calculation are married and living together, follow the instructions for this method (II) except as described below.

   a. DAYS SPENT: Any child of the calculation may be assigned to either parent. The complete "days spent" entry must be completed in such a way that SEARCHS will automatically generate a Worksheet B (see step 1a for an explanation of the Worksheet B requirement).

   b. SUPPLEMENTAL EXPENSES: Enter all applicable expenses paid by the parents or a third party; enter the parents' expenses under Father, and any third-party expenses under Mother. Do not select the day care tax credit for day care expenses paid by the third party.

   c. ALL OTHER FINANCIAL INFORMATION: Combine both parents' amounts, at each line, for income, deductions, and SOLA adjustments; enter the combined amounts under Father, and enter $0 under Mother.

   d. PERSONAL ALLOWANCE: Enter $0 for Mother; enter a revised amount for Father calculated at the poverty guidelines amount for a two-person household, times 130%. (The poverty guidelines amounts can be found in the Hardship Bulletin at section CS 510.5.)

   e. COMMENTS: Enter the following COMMENT, to appear at the end of the calculation (omit the references to the parents if all the children reside with the third party):

"Information in Lines 23 through 27 above, in Section 1 of the Summary and Analysis on the next page, and in Part 2 of Worksheet B, assumes each of the children resides with one parent. In this calculation [names of non-third party children] actually reside with both parents, and [names of third-party children] actually reside with a third party. Corrected information, generated by overriding the computer program for these facts, is shown in Worksheet F.

"The parents have a joint obligation for the children; to determine the joint amount the calculation combines Mother's and Father's income, deductions, and expenses in the single column labeled "Parents."

f. ADJUSTMENTS TO WORKSHEETS FOR JOINT OBLIGATION: Strike out the column headings for lines 1 through 22, Worksheet A, and write in the heading "Parents" in the Father's columns; do the same for Section 2 of the Summary and Analysis. On Worksheet B, Part 1 strike out lines 7 through 15; in lines 16 through 24 change "Father" to "Parents;" strike out all of Part 2. On Worksheet F adapt the column headings, line instructions, and transfer statements as needed to refer to the **joint** obligation of the parents to the third party. Leave blank any columns, lines, or statements that describe amounts owed by one parent to the other parent.

g. VISITATION: In the "days spent" entry in Part 1 of Worksheet F include under "Parents" any days that a child in third-party care spends with either or both parents.

9. VARIATION: SOLE OBLIGATION (ONE PARENT NOT AVAILABLE FOR SUPPORT): Where one of the parents has a sole obligation for purposes of support (for example, the other parent is deceased or is an unidentified father), follow the instructions for this method (II) except as described below.

a. DAYS SPENT: For the non-third party children enter 365 days spent with the parent who has the obligation. For the third-party children enter 365 days spent with the parent who does not have the obligation (the missing parent).

b. SUPPLEMENTAL EXPENSES: Enter all applicable expenses paid by the parent or by the third party (see POLICY, Payment of Expenses). Enter the parent's expenses under the parent who has the obligation, and any third-party expenses under the parent who does not have the obligation. Do not select the day care tax credit for day care expenses paid by the third party.

c. COMMENTS: Enter the following COMMENT, to appear at the end of the calculation:

"Information in lines 23 through 27 above, in Section 1 of the Summary and Analysis on the next page, and in Part 2 of Worksheet B, assumes all of the children reside with a parent. In this calculation [names of third-party children] actually reside with a third party. Corrected information, generated by overriding the computer program for the third-party children, is shown in Worksheet F.

d. WORKSHEET ADJUSTMENTS: In addition to the other worksheet adjustments required by this method (II), in Worksheet B strike out all the lines in Part 1 for the obligation of the missing parent, and strike out all of Part 2.

SAMPLE CALCULATION--METHOD I

Case Facts:

Children A and B live with Mother 265 days, Father 100 days.
Children C and D live with Third Party.

Day care for A and B is $1800 per child, paid by Mother.
Day care for C and D is $1800 per child, paid by Third Party for purpose of maintaining part-time employment.

Mother's gross income is $18,000, from wage stubs.
Father's gross income is $20,000, from wage stubs.

Tax exemptions and credits as shown on Worksheet A, page 4.

Calculation A shows all children with Mother.
Calculation B shows all children with Father.

MONTANA
CHILD SUPPORT GUIDELINES WORKSHEET

Worksheet A Calculation A

Cause/Case Number: 0000000

Worksheets included in this calculation:

A ☒

Mother's Name Mother

Father's Name: Father

Children for whom this calculation is made.

Name	Date of Birth	Name	Date of Birth
Child A	01/11/1999		
Child B	02/12/1997		
Child C	03/06/1995		
Child D	05/23/1993		

ALL AMOUNTS ARE ANNUAL		MOTHER	FATHER
1.	Income		
	a wages, salaries, commissions	$18000	$20000
	b self-employment net earnings		
	c pensions, social security		
	d unearned income		
	e imputed income		
	f earned income credit	1643	
	g other taxable income		
	h other non-taxable income		
	i. **TOTAL INCOME** (add lines 1a through 1h)	19643	20000
2	Allowable Deductions		
	a. ordered child support (for other children)		
	b. allowance for other children (from Table 2)		
	c. ordered alimony/spousal support		
	d. ordered health insurance premium(for other children)		
	e. federal income taxes	936	2168
	f state income taxes	494	658
	g. social security (FICA plus Medicare)	1377	1530
	h. mandatory retirement contributions		
	i. required employment expense		
	j. dependent care expense for other children (not in this calculation), less dependent care tax credit		
	k. other		
	l. **TOTAL ALLOWABLE DEDUCTIONS** (add lines 2a through 2k)	$2807	$4356
3	**INCOME AFTER DEDUCTIONS** (line 1i minus line 2l)	$16836	$15644

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		MOTHER		FATHER
3a	Enter amount from line 3 for each parent	$16836		$15644
4.	Personal allowance for each parent (from Table 1)	11167		11167
5	Income available for child support (line 3a minus line 4; if less than zero, enter zero)	5669		4477
6.	If line 5 is zero, enter the minimum contribution (from Worksheet C). If line 5 is greater than zero, multiplyline 3a by .12 (12%) and enter the result here.	2020		1877
7	For each parent, compare line 5 to line 6 and enter the greater amount.	5669		4477
8	Combined income available (add both columns, line 7)		10146	
9	Parental share of combined income available (divide each column of line 7 by line 8)	.56		44
10	Number of children due support in this calculation (total number of children named on page 1 of this worksheet)		04	
11.	Primary child support allowance for number of children in line 10 (from Table 2)		8934	
12	Supplement to primary allowance (combine annual expenses of mother, father, and third party custodian, if applicable).			
	a. Child daycare costs less dependent care tax credit		6264	
	b Child health insurance premium			
	c. Child extraordinary medical expenses			
	d Other			
	e Total supplement (add 12a, 12b, 12c and 12d)		6264	
13	Total primary allowance and supplement (add lines 11 and 12e)		15198	
14.	**For each parent: if line 6 is greater than line 5, skip to line 21 and enter the amount from line 6. If line 6 is less than line 5, go to line 15.**			
15.	Parent's share of total (for each column, multiply line 13 by line 9)	8511		6687
16.	**Compare line 15 to line 5. Enter the smaller amount here**	5669		4477
17.	Income available for SOLA (line 5 minus line 16; **if zero, enter zero and skip to line 21)**			
18.	Adjustments to income available for SOLA:			
	a. Long distance parenting adjustment (from Worksheet D)			
	b. Other (specify)			
19.	Adjusted income available for SOLA (line 17 minus line 18a and 18b)			
20.	SOLA amount (from Worksheet E)			

		MOTHER	FATHER
21	Add line 16 and line 20	$5669	$4477
22.	**Gross annual obligation** (for each parent, compare line 21 to line 6; enter the larger amount.)	5669	4477
23.	Credit for payment of expenses (enter amount of line 12 expenses that each parent pays)	6264 - 3600 = 2664	
24.	Net annual obligation (line 22 minus line 23; if less than zero, enter zero)	3005	$4477

25 Enter the number of days each child spends with each parent annually in columns A and B. Determine if all of the children spend 110 days or less with the same parent. (Do all the children reside primarily with the same parent and spend 110 days or less with the other parent?) If **YES**, divide the line 24 obligation **for the parent who cares for the children 110 days or less** by the number of children on line 10. Enter the result in column C or D (depending on which parent's obligation is being divided) for each child. Leave the other parent's column blank. If **NO**, complete worksheet B.

Child's Name	A Mother		B Father			C Mother	D Father
a. Child A	265	+	100	=	365		1119
b. Child B	265	+	100	=	365		1119
c. Child C	365	+		=	365		1119
d. Child D	365	+		=	365		1119

	Total Obligation (add lines 25a through 25h)		$4476
26.	Determine the difference between line 25i column C and line 25i Column D. Enter the difference in the column of the parent having the higher obligation.		$4476
27.	**Total monthly transfer payment** (line 26 divided by 12)		$373

Complete Summary and Analysis page to determine monthly transfer payment per child

This is a standard calculation, based on the Montana Child Support Guidelines and, where applicable, the CSED's policy for adapting the Guidelines in cases where the children reside with a third party.
ANY ADJUSTMENT TO THE OBLIGATION IS SUPPORTED BY WRITTEN FINDINGS.

COMMENTS: Although line 25 indicates the children all reside primarily with Mother, Children C and D actually reside with a third party. The entry on line 25 is necessary to accommodate the computer program and does not affect Father's obligation on line 24, in this instance. This calculation shows the monthly transfer payment(s) owed by Father. A companion calculation, printed separately, shows the monthly transfer payment(s) owed by Mother.

Income is determined from wage stubs provided by the parents. Mother's day care expenses for Children A and B are $15 per child per day, 10 days per month; the third party's day care expenses for Children C and D, incurred to maintain part-time employment, are $10 per child per day, 15 days per month.

Prepared By: Case E Worker September 25, 2001

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MONTANA
CHILD SUPPORT GUIDELINES
SUMMARY and ANALYSIS

This page must be attached to Worksheet A to determine a "per child" obligation according to Rule 16(2) (ARM 37.62.134)

SECTION 1 - PER CHILD OBLIGATIONS

Child's Name	#2 Mother's Obligation (line 25, col C)	#3 Mother's Per Child/ Per Month	#4 Father's Obligation (line 25,col D)	#5 Father's Per Child/ Per Month
a Child A			1119 ÷ 12 =	93
b. Child B			1119 ÷ 12 =	93
c Child C			1119 ÷ 12 =	93
d. Child D			1119 ÷ 12 =	93
TOTAL:				$373

FATHER OWES MOTHER ~~$373~~ $186 PER MONTH $93 PER CHILD PER MONTH FOR CHILDREN A+B

FATHER OWES THIRD PARTY $186 PER MONTH, $93 PER CHILD PER MONTH FOR CHILDREN C+D

SECTION 2 - WORKSHEET VARIABLES

This section provides a record of facts or assumptions on which the child support worksheet is based.

	Mother	Father
Tax Filing Status: (S-single; M-married)	S	S
Number of Tax Exemptions Claimed	3	1
Number of Children for Child Tax Credit	2	
Number of Children for Earned Income Credit	2	
Number of Children for Dependent Care Tax Credit	2	

MONTANA
CHILD SUPPORT GUIDELINES WORKSHEET

Worksheet A Calculation B

Cause/Case Number: 0000000

Worksheets included in this calculation:

A ☒

Mother's Name. Mother

Father's Name: Father

Children for whom this calculation is made:

Name	Date of Birth	Name	Date of Birth
Child A	01/11/1999		
Child B	02/12/1997		
Child C	03/06/1995		
Child D	05/23/1993		

ALL AMOUNTS ARE ANNUAL	MOTHER	FATHER
1. Income		
a. wages, salaries, commissions	$18000	$20000
b. self-employment net earnings		
c. pensions, social security		
d. unearned income		
e. imputed income		
f. earned income credit	1643	
g. other taxable income		
h. other non-taxable income		
i. **TOTAL INCOME** (add lines 1a through 1h)	19643	20000
2. Allowable Deductions		
a. ordered child support (for other children)		
b. allowance for other children (from Table 2)		
c. ordered alimony/spousal support		
d. ordered health insurance premium(for other children)		
e. federal income taxes	936	2168
f. state income taxes	494	658
g. social security (FICA plus Medicare)	1377	1530
h. mandatory retirement contributions		
i. required employment expense		
j. dependent care expense for other children (not in this calculation), less dependent care tax credit		
k. other		
l. **TOTAL ALLOWABLE DEDUCTIONS** (add lines 2a through 2k)	$2807	$4356
3. **INCOME AFTER DEDUCTIONS** (line 1i minus line 2l)	$16836	$15644

		MOTHER		FATHER
3a	Enter amount from line 3 for each parent	$16836		$15644
4.	Personal allowance for each parent (from Table 1)	11167		11167
5.	Income available for child support (line 3a minus line 4; if less than zero, enter zero)	5669		4477
6.	If line 5 is zero, enter the minimum contribution (from Worksheet C). If line 5 is greater than zero, multiplyline 3a by .12 (12%) and enter the result here.	2020		1877
7	For each parent, compare line 5 to line 6 and enter the greater amount.	5669		4477
8.	Combined income available (add both columns, line 7)		10146	
9.	Parental share of combined income available (divide each column of line 7 by line 8)	.56		.44
10.	Number of children due support in this calculation (total number of children named on page 1 of this worksheet)		04	
11.	Primary child support allowance for number of children in line 10 (from Table 2)		8934	
12.	Supplement to primary allowance (combine annual expenses of mother, father, and third party custodian, if applicable).			
	a. Child daycare costs less dependent care tax credit		6264	
	b. Child health insurance premium			
	c. Child extraordinary medical expenses			
	d. Other			
	e. Total supplement (add 12a, 12b, 12c and 12d)		6264	
13.	Total primary allowance and supplement (add lines 11 and 12e)		15198	
14.	**For each parent: if line 6 is greater than line 5, skip to line 21 and enter the amount from line 6. If line 6 is less than line 5, go to line 15.**			
15.	Parent's share of total (for each column, multiply line 13 by line 9)	8511		6687
16	Compare line 15 to line 5. Enter the smaller amount here	5669		4477
17.	Income available for SOLA (line 5 minus line 16; if zero, enter zero and skip to line 21)			
18.	Adjustments to income available for SOLA:			
	a. Long distance parenting adjustment (from Worksheet D)			
	b. Other (specify)			
19.	Adjusted income available for SOLA (line 17 minus line 18a and 18b)			
20.	SOLA amount (from Worksheet E)			

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		MOTHER	FATHER
21	Add line 16 and line 20	$5669	$4477
22	**Gross annual obligation** (for each parent, compare line 21 to line 6; enter the larger amount.)	5669	4477
23.	Credit for payment of expenses (enter amount of line 12 expenses that each parent pays)	2664	3600 -3600 = 0
24.	Net annual obligation (line 22 minus line 23; if less than zero, enter zero)	$3005	~~0877~~ $4477

25. Enter the number of days each child spends with each parent annually in columns A and B. Determine if all of the children spend 110 days or less with the same parent. (Do all the children reside primarily with the same parent and spend 110 days or less with the other parent?) If **YES**, divide the line 24 obligation **for the parent who cares for the children 110 days or less** by the number of children on line 10. Enter the result in column C or D (depending on which parent's obligation is being divided) for each child. Leave the other parent's column blank. If **NO**, complete worksheet B.

Child's Name	A Mother		B Father			C Mother	D Father
a. Child A		+	365	=	365	751	
b. Child B		+	365	=	365	751	
c. Child C		+	365	=	365	751	
d. Child D		+	365	=	365	751	
Total Obligation (add lines 25a through 25h)						$3004	

26	Determine the difference between line 25i column C and line 25i Column D. Enter the difference in the column of the parent having the higher obligation.	$3004	
27	**Total monthly transfer payment** (line 26 divided by 12)	~~$250~~ see next page	

Complete Summary and Analysis page to determine monthly transfer payment per child

This is a standard calculation, based on the Montana Child Support Guidelines and, where applicable, the CSED's policy for adapting the Guidelines in cases where the children reside with a third party.
ANY ADJUSTMENT TO THE OBLIGATION IS SUPPORTED BY WRITTEN FINDINGS.

COMMENTS: Although line 25 indicates the children all reside primarily with Father, Children A and B actually reside primarily with Mother, and Children C and D actually reside with a third party. The entry on line 25 is necessary to accommodate the computer program and does not affect Mother's obligation on line 24, in this instance. This calculations shows the monthly transfer payment(s) owed by Mother. A companion calculation, printed separately, shows the monthly transfer payment(s) owed by Father.

Income is determined from the parents' wage stubs. Mother's day care expenses for Children A and B are $15 per child per day, 10 days per month; the third party's expenses for Children C and D, incurred to maintain part-time employment, are $10 per child per day, 15 days per month.

Prepared By: Case E Worker September 25, 2001

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MONTANA
CHILD SUPPORT GUIDELINES
SUMMARY and ANALYSIS

This page must be attached to Worksheet A to determine a "per child" obligation according to Rule 16(2) (ARM 37.62.134)

SECTION 1 - PER CHILD OBLIGATIONS

Child's Name	#2 Mother's Obligation (line 25, col C)	#3 Mother's Per Child/ Per Month	#4 Father's Obligation (line 25,col D)	#5 Father's Per Child/ Per Month
~~a. Child A~~	~~751 ÷ 12 =~~	~~63~~		
~~b. Child B~~	~~751 ÷ 12 =~~	~~63~~		
c Child C	751 ÷ 12 =	63		
d. Child D	751 ÷ 12 =	63		
TOTAL:		$126 ~~$250~~		

MOTHER OWES THIRD PARTY $126 ~~FATHER $250~~ PER MONTH $63 PER CHILD PER MONTH FOR CHILDREN C & D

SECTION 2 - WORKSHEET VARIABLES
This section provides a record of facts or assumptions on which the child support worksheet is based.

	Mother	Father
Tax Filing Status: (S-single; M-married)	S	S
Number of Tax Exemptions Claimed	3	1
Number of Children for Child Tax Credit	2	
Number of Children for Earned Income Credit	2	
Number of Children for Dependent Care Tax Credit	2	

SAMPLE CALCULATION--METHOD II

Case Facts:

Children A and B live with Mother.
Children C and D live with Third Party.

Day care for A and B is $2400 per child, paid by Mother.
Day care for C and D is $1800 per child, paid by Third Party for purpose of maintaining part-time employment.

Mother's gross income is $44,000, from financial affidavit.
Father's gross income is $60,000, from financial affidavit.

Child C has visitation with Mother 50 days, with Father 95 days.
Child D has no visitation with either parent.

Tax exemptions and credits as shown on Worksheet A, page 4.

MONTANA
CHILD SUPPORT GUIDELINES WORKSHEET

Worksheet A

Cause/Case Number: 0000000

Worksheets included in this calculation:

A ☒ B ☒

Mother's Name Mother

Father's Name: Father

Children for whom this calculation is made.

Name	Date of Birth	Name	Date of Birth
Child A	01/11/1996		
Child B	02/12/1995		
Child C	03/06/1993		
Child D	05/23/1992		

ALL AMOUNTS ARE ANNUAL	MOTHER	FATHER
1. Income		
a. wages, salaries, commissions	$44000	$60000
b. self-employment net earnings		
c. pensions, social security		
d. unearned income		
e. imputed income		
f. earned income credit		
g. other taxable income		
h. other non-taxable income		
i. **TOTAL INCOME** (add lines 1a through 1h)	44000	60000
2. Allowable Deductions		
a. ordered child support (for other children)		
b. allowance for other children (from Table 2)		
c. ordered alimony/spousal support		
d. ordered health insurance premium(for other children)		
e. federal income taxes	4756	11860
f. state income taxes	1915	3171
g. social security (FICA plus Medicare)	3366	4590
h. mandatory retirement contributions		
i. required employment expense		
j. dependent care expense for other children (not in this calculation), less dependent care tax credit		
k. other		
l. **TOTAL ALLOWABLE DEDUCTIONS** (add lines 2a through 2k)	$10037	$19621
3 **INCOME AFTER DEDUCTIONS** (line 1i minus line 2l)	$33963	$40379

		MOTHER		FATHER
3a.	Enter amount from line 3 for each parent	$33963		$40379
4	Personal allowance for each parent (from Table 1)	11167		11167
5.	Income available for child support (line 3a minus line 4; if less than zero, enter zero)	22796		29212
6	If line 5 is zero, enter the minimum contribution (from Worksheet C). If line 5 is greater than zero, multiplyline 3a by .12 (12%) and enter the result here.	4076		4845
7	For each parent, compare line 5 to line 6 and enter the greater amount.	22796		29212
8.	Combined income available (add both columns, line 7)		52008	
9	Parental share of combined income available (divide each column of line 7 by line 8)	.44		.56
10	Number of children due support in this calculation (total number of children named on page 1 of this worksheet)		04	
11.	Primary child support allowance for number of children in line 10 (from Table 2)		8934	
12	Supplement to primary allowance (combine annual expenses of mother, father, and third party custodian, if applicable).			
	a. Child daycare costs less dependent care tax credit		7440	
	b. Child health insurance premium			
	c. Child extraordinary medical expenses			
	d Other			
	e. Total supplement (add 12a, 12b, 12c and 12d)		7440	
13	Total primary allowance and supplement (add lines 11 and 12e)		16374	
14	**For each parent: if line 6 is greater than line 5, skip to line 21 and enter the amount from line 6. If line 6 is less than line 5, go to line 15.**			
15	Parent's share of total (for each column, multiply line 13 by line 9)	7204		9169
16.	**Compare line 15 to line 5. Enter the smaller amount here**	7204		9169
17.	Income available for SOLA (line 5 minus line 16; if zero, enter zero and skip to line 21)	15592		20043
18.	Adjustments to income available for SOLA:			
	a. Long distance parenting adjustment (from Worksheet D)			
	b. Other (specify)			
19.	Adjusted income available for SOLA (line 17 minus line 18a and 18b)	15592		20043
20.	SOLA amount (from Worksheet E)	$4833		$6213

		MOTHER	FATHER
21.	Add line 16 and line 20	$12038	$15382
22.	**Gross annual obligation** (for each parent, compare line 21 to line 6; enter the larger amount.)	12038	15382
~~23.~~	~~Credit for payment of expenses (enter amount of line 12 expenses that each parent pays)~~	~~3840~~	~~3600~~
~~24~~	~~Net annual obligation (line 22 minus line 23, if less than zero, enter zero)~~	~~$8198~~	~~$11782~~

GO TO WORKSHEET B

~~25. Enter the number of days each child spends with each parent annually in columns A and B. Determine if all of the children spend 110 days or less with the same parent. (Do all the children reside primarily with the same parent and spend 110 days or less with the other parent?) If **YES**, divide the line 24 obligation **for the parent who cares for the children 110 days or less** by the number of children on line 10. Enter the result in column C or D (depending on which parent's obligation is being divided) for each child. Leave the other parent's column blank. If **NO**, complete worksheet B.~~

Child's Name	A Mother		B Father			C Mother	D Father
~~a. Child A~~	~~365~~	~~+~~		~~=~~	~~365~~		~~3846~~
~~b. Child B~~	~~365~~	~~+~~		~~=~~	~~365~~		~~3846~~
~~c. Child C~~		~~+~~	~~365~~	~~=~~	~~365~~	~~3009~~	
~~d. Child D~~		~~+~~	~~365~~	~~=~~	~~365~~	~~3009~~	
~~Total Obligation (add lines 25a through 25h)~~						~~$6018~~	~~$7692~~

~~26. Determine the difference between line 25i column C and line 25i Column D. Enter the difference in the column of the parent having the higher obligation.~~ ~~$1674~~

~~27. **Total monthly transfer payment** (line 26 divided by 12)~~ ~~$140~~

~~Complete Summary and Analysis page to determine monthly transfer payment per child.~~

This is a standard calculation, based on the Montana Child Support Guidelines and, where applicable, the CSED's policy for adapting the Guidelines in cases where the children reside with a third party.
ANY ADJUSTMENT TO THE OBLIGATION IS SUPPORTED BY WRITTEN FINDINGS.

COMMENTS: Information in lines 23 through 27 above, in Section 1 of the Summary and Analysis on the next page, and in Part 2 of Worksheet B, assumes all of the children reside with a parent. In this calculation Children C and D actually reside with a third party. Corrected information, generated by overriding the computer program for the third-party children, is shown in Worksheet F.

Income is determined from financial affidavits provided by the parents. Mother's day care expenses for Children A and B are $10 per child per day, 20 days per month; the third party's day care expenses for Children C and D, incurred to maintain part-time employment, are $10 per child per day, 15 days per month.

Prepared By: Case E Worker September 25, 2001

MONTANA
CHILD SUPPORT GUIDELINES

SUMMARY and ANALYSIS
This page must be attached to Worksheet A to determine a "per child" obligation
according to Rule 16(2) (ARM 37.62.134)

~~SECTION 1 - PER CHILD OBLIGATIONS~~

~~Child's Name~~	~~#2 Mother's Obligation (line 25, col C)~~	~~#3 Mother's Per Child/ Per Month~~	~~#4 Father's Obligation (line 25, col D)~~	~~#5 Father's Per Child Per Month~~
~~a. Child A~~			~~3846 ÷ 12 =~~	~~321~~
~~b. Child B~~			~~3846 ÷ 12 =~~	~~321~~
~~c. Child C~~	~~3009 – 12 =~~	~~251~~		
~~d. Child D~~	~~3009 – 12 =~~	~~251~~		
~~TOTAL:~~		~~$502~~		~~$641~~

~~FATHER OWES MOTHER $140 PER MONTH~~
~~The "per child" obligations are shown on lines a through b in column #3 and column #5~~

SECTION 2 - WORKSHEET VARIABLES
This section provides a record of facts or assumptions on which the child support worksheet is based.

	Mother	Father
Tax Filing Status: (S-single; M-married)	S	S
Number of Tax Exemptions Claimed	3	1
Number of Children for Child Tax Credit	2	
Number of Children for Earned Income Credit	2	
Number of Children for Dependent Care Tax Credit	2	

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(Rev. 11/98)

MONTANA
CHILD SUPPORT GUIDELINES
Worksheet B

(Combination Parenting Arrangements - Part 1)
Complete Worksheet B (WS-B), Part 1, only if indicated on Worksheet A (WS-A), line 25.

1. Enter name of each child from WS-A.		Child A	Child B	Child C	Child D
2. Divide line 11, WS-A by the total number of children on line 1 (above) and enter here.		2233	2233	2233	2233
3. Enter the supplemental needs shown on WS-A, 12a, 12b, 12c, 12d, separated out by child. The total for all children must match WS-A, line 12e.		1920	1920	1800	1800
4. Total needs of each child; line 2 plus line 3.		4153	4153	4033	4033
5. Add all columns of line 4.	16374				
6. For each child (column), divide line 4 by line 5.		.25	.25	.25	.25
MOTHER'S DIVISION OF OBLIGATION					
7. Enter Mother's gross obligation from WS-A, line 22.	12038				
8. Enter amount from Mother's line 20, WS-A.	4833				
9. Subtract line 8 from line 7.	7204				
10. Multiply line 6 by line 9 for each child.		1801	1801	1801	1801
11. Enter amount from Mother's line 20, WS-A.	4833				
12. Divide line 11 by total children on line 1.		1208	1208	1208	1208
13. Add line 10 and line 12.		3009	3009	3009	3009
14. Enter credit for payment of expenses for each child. The total must match Mother's line 23, WS-A.		1920	1920		
15. Mother's obligation for each child: subtract line 14 from line 13 for each child. Enter here and on WS-B, Part 2, Column A, line 1. If less than zero, enter as negative.		1089	1089	3009	3009
FATHER'S DIVISION OF OBLIGATION					
16. Enter Father's gross obligation from WS-A, line 22.	15382				
17. Enter amount from Father's line 20, WS-A.	6213				
18. Subtract line 17 from line 16.	9169				
19. Multiply line 6 by line 18 for each child.		2292	2292	2292	2292
20. Enter amount from Father's line 20, WS-A.	6213				
21. Divide line 20 by total children on line 1.		1553	1553	1553	1553
22. Add line 19 and line 21.		3846	3846	3846	3846
23. Enter credit for payment of expenses for each child. ~~The total must match Father's line 23, WS-A.~~				0 ~~1800~~	0 ~~1800~~
24. Father's obligation for each child: subtract line 23 from line 22 for each child. Enter here and on WS-B, Part 2, Column B, line 1. If less than zero, enter as negative.		3846	3846	~~2046~~ 3846	~~2046~~ 3846

CS404B-1
(New 11/98)

MONTANA
CHILD SUPPORT GUIDELINES
Worksheet B

(Combination Parenting Arrangements - Part 2)
Complete Worksheet B (WS-B), Part 2 only if Worksheet B, Part 1 was completed.
Complete one section of Part 2 for each child included in Worksheet A.

CHILD'S NAME: Child A	Mother	Father
1. Obligation from WS-B, Part 1: Mother, line 15, Father, line 24	$1089	$3846
2. Enter number of days spent with each parent during the year.	365	
3. If line 2 is greater than 110 for both parents, go to line 5. If not, enter the obligation from line1 of the parent with the least number of days. Leave the other parent's line blank. Go to line 12.		3846
4. Rate of normal visitation.	110	110
5. Subtract line 4 from line 2.		
6. Credit factor.	0.0069	0.0069
7. Multiply line 6 by line 5.		
8. Multiply line 7 by line 1 (round to the nearest dollar).		
9. Subtract line 8 from line 1.		
10. Determine the difference between line 9, Col. A and line 9, Col B and enter in the column of the parent with the higher obligation.		
11. If entry on line 10, compare to entry on line 1; enter smaller amount here		
12. Enter amount from line 3 or line 11. ~~Enter here and on line 25, WS-A, Column C or D for this child.~~		$3846

CHILD'S NAME: Child B	Mother	Father
1. Obligation from WS-B, Part 1: Mother, line 15, Father, line 24	$1089	$3846
2. Enter number of days spent with each parent during the year.	365	
3. If line 2 is greater than 110 for both parents, go to line 5. If not, enter the obligation from line1 of the parent with the least number of days. Leave the other parent's line blank. Go to line 12.		3846
4. Rate of normal visitation.	110	110
5. Subtract line 4 from line 2.		
6. Credit factor.	0.0069	0.0069
7. Multiply line 6 by line 5.		
8. Multiply line 7 by line 1 (round to the nearest dollar).		
9. Subtract line 8 from line 1.		
10. Determine the difference between line 9, Col. A and line 9, Col B and enter in the column of the parent with the higher obligation.		
11. If entry on line 10, compare to entry on line 1, enter smaller amount here		
12. Enter amount from line 3 or line 11. ~~Enter here and on line 25, WS-A, Column C or D for this child.~~		$3846

GO TO WORKSHEET F

CS404C 1
(New 11/98)

MONTANA
CHILD SUPPORT GUIDELINES
Worksheet B

(Combination Parenting Arrangements - Part 2)
Complete Worksheet B (WS-B), Part 2 only if Worksheet B, Part 1 was completed.
Complete one section of Part 2 for each child included in Worksheet A.

	CHILD'S NAME: Child C	Mother	Father
1	Obligation from WS-B, Part 1. Mother, line 15, Father, line 24	$3009	$2046
2	Enter number of days spent with each parent during the year.		365
3	If line 2 is greater than 110 for both parents, go to line 5. If not, enter the obligation from line1 of the parent with the least number of days. Leave the other parent's line blank. Go to line 12.	3009	
4	Rate of normal visitation	110	110
5	Subtract line 4 from line 2.		
6.	Credit factor.	0.0069	0.0069
7	Multiply line 6 by line 5.		
8.	Multiply line 7 by line 1 (round to the nearest dollar).		
9.	Subtract line 8 from line 1		
10	Determine the difference between line 9, Col A and line 9, Col B and enter in the column of the parent with the higher obligation.		
11	If entry on line 10, compare to entry on line 1; enter smaller amount here.		
12	Enter amount from line 3 or line 11. Enter here and on line 25, WS-A, Column C or D for this child	$3009	

	CHILD'S NAME. Child D	Mother	Father
1	Obligation from WS-B, Part 1 Mother, line 15, Father, line 24	$3009	$2046
2	Enter number of days spent with each parent during the year.		365
3	If line 2 is greater than 110 for both parents, go to line 5. If not, enter the obligation from line1 of the parent with the least number of days. Leave the other parent's line blank. Go to line 12.	3009	
4	Rate of normal visitation.	110	110
5	Subtract line 4 from line 2.		
6	Credit factor	0.0069	0.0069
7	Multiply line 6 by line 5		
8	Multiply line 7 by line 1 (round to the nearest dollar).		
9	Subtract line 8 from line 1.		
10.	Determine the difference between line 9, Col. A and line 9, Col B and enter in the column of the parent with the higher obligation.		
11	If entry on line 10, compare to entry on line 1; enter smaller amount here		
12	Enter amount from line 3 or line 11. Enter here and on line 25, WS-A, Column C or D for this child.	$3009	

CS404C-1
(New 11/98)

Worksheet F–Third-Party Adjustments

PART 1--Visitation Adjustment. (Complete Part 1 for **all** children in third-party care, regardless of whether support is being established, then continue to Part 2.)

Child's Name: Child C

	Third Party		Mother		Father	
1. Days spent with....	220	+	50	+	95	= 365
2. Percentage (line 1/365)	.60		.14		.26	
3. Total support obligation for this child (from WS-B, Part 1, lines 15 and 24)			*Round all amounts to* 3009		*whole dollars:* 3846	
4. Amount owed to Third Party (line 3 amt) x (line 2, % for Third Party)			1805		2308	
5. Amount owed to other parent (line 3 amt) x (line 2, % for other parent)			782		538	
6. Parent-offset payment			244			

(Find the difference between Mother's and Father's amounts in line 5; enter the difference in the column for the parent owing the higher amount.)

Child's Name: Child D

	Third Party		Mother		Father	
1. Days spent with....	365	+	0	+	0	= 365
2. Percentage (line 1/365)	1.0		0		0	
3. Total support obligation for this child (from WS-B, Part 1, lines 15 and 24)			*Round all amounts to* 3009		*whole dollars:* 3846	
4. Amount owed to Third Party (line 3 amt) x (line 2, % for Third Party)			3009		3846	
5. Amount owed to other parent (line 3 amt) x (line 2, % for other parent)			0		0	
6. Parent-offset payment			n/a		n/a	

(Find the difference between Mother's and Father's amounts in line 5; enter the difference in the column for the parent owing the higher amount.)

Child's Name: ______________

	Third Party		Mother		Father	
1. Days spent with....		+		+		= 365
2. Percentage (line 1/365)						
3. Total support obligation for this child (from WS-B, Part 1, lines 15 and 24)			*Round all amounts to*		*whole dollars:*	
4. Amount owed to Third Party (line 3 amt) x (line 2, % for Third Party)						
5. Amount owed to other parent (line 3 amt) x (line 2, % for other parent)						
6. Parent-offset payment						

(Find the difference between Mother's and Father's amounts in line 5; enter the difference in the column for the parent owing the higher amount.)

CS-404.1F
(New 09/01)

Part 2 – Summary and Analysis (Complete Part 2 only for children whose support is being established.)

A. CHILDREN IN THIRD-PARTY CARE

	Child's Name	A1 Mother's Obligation to 3rd Party*	A2 Mother's Obligation To Father**	A3 Father's Obligation to 3rd Party*	A4 Father's Obligation To Mother**
a.	Child C	1805	244	2308	
b.	Child D	3009		3846	
c.					
d.					
e.	TOTAL, lines a through d	4814	244	6154	
f.	Monthly Obligation (e ÷ 12)	401	20	513	

* From WS-F, Part 1, line 4
** From WS-F, Part 1, line 8

B. CHILDREN NOT IN THIRD-PARTY CARE

	Child's Name	B1 Mother's Obligation to Father*		B2 Mother for CHMO	B3 Father's Obligation to Mother*		B4 Father for CHMO
a.	Child A		÷ 12 =		3846	÷ 12 =	321
b.	Child B		÷ 12 =		3846	÷ 12 =	321
c.			÷ 12 =			÷ 12 =	
d.			÷ 12 =			÷ 12 =	
e.			TOTAL			TOTAL	642

* From WS-B, Part 2, line 12

C. AMOUNTS FOR SUPPORT ORDER

1. Mother pays Third Party $ 401 per month for the children in third-party care (A1, line f).
2. Father pays Third Party $ 513 per month for the children in third-party care (A3, line f).

Monthly amounts are the individual amounts on lines a through d, columns A1 and A3, divided by 12.

Check and complete any or none of the following statements, as applicable:

X Mother pays Father $ 20 per month for the children in third-party care (A2, line f).
☐ Mother pays Father $ ______ per month for the children not in third-party care (B2, line e).
☐ Father pays Mother $ ______ per month for the children in third-party care (A4, line f).
X Father pays Mother $ 642 per month for the children not in third-party care (B4, line e).

Monthly amounts are the individual amounts:

- *on lines a through d, columns A2 and A4, divided by 12, and*
- *on lines a through d, columns B2 and B4.*

Amounts for any children not listed on this page can be found in Worksheets B and F as follows: for children residing with one parent, WS B, Part 2, line 12; for children residing with both parents or an living parent, WS-B, Part 1, lines 15 and 24; for children in third-party care, WS-F, Part 1, lines 4 and

SUPERSEDES

CS 405.4, Notice of Default, February 15, 1988

POLICY

Following service of an administrative notice, if the person served has not taken sufficient action to prevent a default, the CSED **may, at its option,** delay final action on the default by issuing further notice in the form of a Notice of Default. The purpose of the Notice of Default is to make the person aware of the existent default situation, and to prompt appropriate action. If the person does not respond appropriately within 10 days, the CSED then proceeds with a final administrative order based on the default. EXCEPTION: The Notice of Default is **not** appropriate for use in income withholding actions, because the federal time frames following the withholding notice do not, in practice, allow for the additional response time required.

Generally the Notice of Default is used--at the caseworker's or region's option--when the following conditions apply:

(1) Initial Contact. The person served has timely contacted (or responded to contact by) the CSED in a way that recognizes the existence of the pending administrative action.

(2) Applicable Default. The person served has not timely requested a hearing on the notice or signed an agreement consenting to the terms of the notice (or to other terms acceptable to the CSED), and the CSED has not dismissed the notice.

(3) Possible Misconception. In the circumstances, it is possible the person served is not aware he or she is in a default position, or that the CSED still intends to proceed as stated in the notice.

When it is certain the person understands he or she is subject to default action, or when there is no contact at all with the person following service of the original notice, the CSED normally does not use the Notice of Default. However, in exceptional situations it may still be useful in protecting the CSED from later charges the person was not afforded due process, or in preventing the necessity for later CSED actions to undo the default order.

There is no statutory or other legal requirement for the CSED to issue a Notice of Default in connection with any administrative process. Nor does CSED policy require use of the Notice of Default as a standard procedure in any of these processes. (Certain specific, non-standard scenarios are identified in this Manual where the Notice of Default is expressly required.)

PROCEDURES

Caseworker

1. Upon determining a person served with a CSED administrative notice is in default,

determines whether Notice of Default applies according to above POLICY and to PROCEDURES in applicable Manual section. If so, proceeds to step 2.

2. Prepares form CS-405.4, Notice of Default, and sends by regular mail to last known address of person served.

3. Monitors for response within 10 working days plus 3 mailing days, and takes action as follows:

   a. If person does not timely request hearing or contact CSED (or if timely contact does not result in a signed agreement acceptable to the CSED or in a dismissal of the original notice), proceeds with default action for particular administrative process.

   b. If person timely requests hearing in writing, follows procedures for administrative hearing associated with particular administrative process.

   c. If person timely agrees to sign agreement acceptable to CSED, follows procedures for preparing and executing agreement associated with particular administrative process.

   d. If person timely contacts CSED and proves action specified in notice is not appropriate, executes form CS-401.3F, Motion and Order to Dismiss Administrative Notice (or other specialized document as appropriate to particular administrative process).

SUPERSEDES

CS 405.8, Subpoena and Subpoena Duces Tecum, February 1991

POLICY

As provided by Montana Code Annotated, SS 40-5-202 and 2-4-104, the Child Support Enforcement Division (CSED) may compel the attendance of witnesses and/or the production of documentary evidence which is necessary for the orderly and just conduct of administrative hearings. Sometimes, additional information will be needed after a decision and order is issued. In either instance, this is accomplished through a subpoena or a subpoena duces tecum. The CSED's subpoena power is limited by the U.S. Constitution's protection from unreasonable searches and seizures. Thus, any information sought must be relevant to the issues before the Hearing Officer. Further, the production of the information may not be unreasonably burdensome to the person subpoenaed.

A witness may be served with a subpoena, a subpoena duces tecum, or both. Service must be made by the sheriff of the county where the witness resides, or where the documents are located.

A witness may be ordered to appear in person or by telephone. If ordered to produce documents, the witness should deliver the original documents, or clear copies of them, to the requesting party.

Any party to a proceeding may request that the CSED issue a subpoena and or a subpoena duces tecum. Witness fees, mileage expenses, and the reasonable costs of preparing, copying and transmitting the documents requested are the responsibility of the party requesting the subpoena and/or subpoena duces tecum. A witness compelled to appear in person at an administrative hearing is entitled to be represented by an attorney. The witness is responsible for their own attorney fees.

A subpoena duces tecum is not required in the normal course of agency business to release information usually released to an obligor, such as debt computations. If you are served with a subpoena, or a subpoena duces tecum, please consult a regional CSED Staff Attorney immediately. DO NOT release information without first consulting the Staff Attorney.

A person served with a subpoena or a subpoena duces tecum may object to the order. The Hearing Officer may, after considering the objection, modify or terminate the order, or impose conditions on its use.

Consult a CSED Staff Attorney for enforcement of a subpoena or a subpoena duces tecum.

For procedures governing the issuance of a blood test subpoena, see CS Manual section 600.1 and following.

DEFINITIONS

Subpoena: A legal document ordering a witness to appear at a specified time and place to testify.

Subpoena duces tecum: A legal document which commands the custodian of specified papers or other non-testimonial evidence to appear and produce that evidence for inspection and copying at a specified time and place.

PROCEDURES

UPON AGENCY REQUEST:

Caseworker

1. Prepares and executes CS-405.8A, "Affidavit of Necessity," checking appropriate boxes for issuance of a subpoena, a subpoena duces tecum, or both. Checks SEARCHS PRX screen for indication that information should be protected; if found, attaches note to affidavit warning OALJ, and arranges for protection of information upon receipt.

   NOTE: Consults CSED Staff Attorney if questions of special usage or language arise.

Supervisor

2. Reviews affidavit and case file to determine whether the requested evidence is necessary, whether the request is unduly burdensome, and whether the form and content is correct.
   a. If the request is inappropriate, returns file to caseworker with appropriate case notes.
   b. If the request is appropriate, makes appropriate case notes and returns file to caseworker with any necessary corrections.

Caseworker

3. Makes any corrections to affidavit, and prepares two copies. Prepares CS-405.8B "Subpoena," or CS-405.8C "Subpoena Duces Tecum." If appropriate, prepares CS-405.8D "Request to Testify by Telephone."

Hearings Assistant

4. Checks completed subpoena form(s) for completeness, form, and accuracy. Forwards acceptable packets to Hearing Officer for review and signature. If unacceptable, returns to caseworker for correction.

Hearing Officer

5. Reviews subpoena/subpoena duces tecum and affidavit. Determines whether the requested information/documents are relevant and whether production would be unduly burdensome. If acceptable, signs subpoena/subpoena duces tecum, and returns to Hearings Assistant. If unacceptable, writes "Denied" across face of document and initials, and returns to Hearings Assistant.

Hearings Assistant

6. Affixes Department seal to signed subpoena form(s), and makes three copies of the executed form(s). Arranges for service by certified mail, restricted delivery, return receipt requested; or, requests sheriff's praecipe from caseworker and arranges for sheriff's service. Retains original affidavit in hearing file. Retains one copy of subpoena for hearings file, and sends one copy to caseworker.

Caseworker

7. Upon receipt of copy of issued subpoena form(s), files in case file and monitors for return of service.

8. Upon return of service, notes date of service in the case file. Forwards original subpoena and return to Hearings Assistant. Retains a copy of return of service in case file.

UPON REQUEST OF NON-AGENCY PARTY

Caseworker or Hearings Assistant

1. Upon request of non-agency party for a subpoena or a subpoena duces tecum, completes top portion of CS-405.8A "Affidavit of Necessity." Mails affidavit and CS-405.8E "How to request a Subpoena or a Subpoena Duces Tecum from the CSED" to the requestor.

Hearings Assistant

2. Upon return of the party's affidavit, reviews request for completeness. Checks SEARCHS PRX screen for indication that information should be protected; if found, attaches note to hearings officer's attention, and arranges with hearing officer for protection as applicable pursuant to MCA section 40-5-206. Prepares necessary subpoena form(s), and presents to Hearing Officer for Review.

Hearing Officer

3. Reviews subpoena form(s) and affidavit. Determines whether requested information/documents are relevant, and whether production would be unduly

burdensome. If acceptable, signs subpoena form(s) and returns to Hearings Assistant. If unacceptable, writes "Denied" across face of document and initials, and returns to Hearings Assistant.

Hearings Assistant

4. If necessary, prepares Form CS-405.8D, "Request to Testify by Telephone." Affixes Department seal to signed subpoena form(s). Returns executed form(s), or denied subpoena form(s) to requestor. As necessary, includes a CS-401.3C "Praecipe."

SUPERSEDES

CS 405.12, Investigative Subpoena, March 25, 1996

REFERENCES

Montana Code Annotated, § 40-5-202

DEFINITION

The investigative subpoena may be used during the course of an investigation when there is no pending administrative hearing action. It commands the custodian of specified information to provide the information to the CSED.

POLICY

The Legislature has granted the CSED the authority to issue investigative subpoenas while providing services under Chapter 5 of Title 40 of the Montana Code Annotated. The investigative subpoena may be issued by the agency in furtherance of its legislative mandate. The investigative subpoena is a regulatory tool. As such, its use is exclusively reserved to the agency.

The CSED may issue an investigative subpoena if the following conditions are met:

- the investigation must be for the purposes outlined in Chapter 5 of Title 40 of the Montana Code Annotated;
- the information sought is relevant to the issue being investigated; and,
- the subpoena is reasonably specific to obtain relevant documents or described information.

Some of the more common uses of an investigative subpoena may be:

- before the use of a Notice of Parental Responsibility, to obtain the information called for in a paternity affidavit;
- before the use of a Notice of Financial Responsibility, to obtain the information called for in a financial affidavit; and,
- after an order has been issued to obtain information which will allow enforcement, such as bank account information.

The CSED's subpoena power is limited by the U.S. Constitution's protection from unreasonable searches and seizures. Thus, any information sought must be relevant to the issues being investigated. Further, the production of the information may not be unreasonably burdensome to the person subpoenaed.

No subpoena, whether regular or investigative, issued by the CSED hearing office or by the District Court, guarantees unlimited access to all information. Some information is beyond the reach of any subpoena. This information is called "privileged information." Examples of privileged information not subject to compelled disclosure are: mediation sessions under MCA § 40-4-301 et seq and § 39-71-2410; proceedings of the medical review panel, § 27-6-704; proceedings of the medical-legal panel, § 27-1-703; and the evidentiary privileges regarding communication between parties such as attorney and client, husband and wife, and doctor and patient.

Some privileged information is conditional and may be susceptible to administrative subpoena. Examples include information in the possession of social workers, mental health counselors, direct-entry midwives, and health care providers.

Access to some information is limited by statute to judicial subpoenas or other court order and is not susceptible to administrative subpoena. These restrictive statutes, for the most part, prevent a state agency from disclosing information which it holds but may not prevent the disclosure of similar information held by one who is not a state agency, unless a privilege applies. Examples are: individual income tax records, corporation tax records, library records, electronic funds transfer, health maintenance organization records, non-privileged evidence given by a certified public accountant in the course of a licensure board proceeding, youth court records, confidential criminal justice information, out-of-wedlock birth, adult protective services information, confidential welfare information, records of the developmentally disabled, records of patients or former patients of mental health facilities, reports of stolen vehicles, information regarding a traffic accident not involving a conviction, and financial statements of warehouse operators and commodity dealers. Some information which is subject to statutory limitations on disclosure is already available to the CSED without a subpoena of any kind, such as some tax information and out-of-wedlock birth information.

Information regarding insurance transactions may be obtained through the use of a subpoena. It is arguable that student academic records maintained by the Montana University system are subject to administrative subpoena.

A party to the investigation or a third party may be served with an investigative subpoena. Service must be made by the sheriff of the county where the party resides, or where the documents are located.

If ordered to produce documents, the party should deliver the original documents, or clear copies of them, to the CSED.

The reasonable costs of preparing, copying and transmitting the documents requested are the responsibility of the CSED, as the CSED is the party requesting the investigative subpoena.

If the party fails to comply with the subpoena, an application for enforcement may be filed in the district court, or an administrative civil contempt action may be initiated under CS 503.5.

The CSED regional staff attorney should be consulted prior to an application for an investigative subpoena.

PROCEDURES

UPON AGENCY REQUEST:

Caseworker

1. Prepares and executes form CS-405.8A, "Affidavit of Necessity." Checks SEARCHS PRX screen for indication that information should be protected; if found, attaches note to affidavit warning OALJ, and arranges for protection of information upon receipt.

   NOTE 1: Affidavit for Investigative Subpoena--User Access. The CS-405.8A option for the Affidavit for Investigative Subpoena will be available on SEARCHS at a future date. Select the "investigative subpoena" option. A WordPerfect version of the Affidavit for Investigative Subpoena will be available until the SEARCHS form is updated. A sample appears on page 6 of this section.

   NOTE 2: Adjusting Affidavit Language--Requesting Information in CSED Form. The caseworker should consult a CSED Staff Attorney if questions of special usage or language arise. For example, if the investigative subpoena is being used to compel a party to provide the specific information called for in a CSED paternity or financial affidavit, the language should be adjusted to request production of the "information" rather than production of "described documents." See step 3 for corresponding adjustments to the language in the Investigative Subpoena itself.

Supervisor

2. Reviews affidavit and case file to determine whether the requested evidence is necessary, whether the request is unduly burdensome, and whether the form and content is correct.

   a. If the request is inappropriate or if information is incorrect, returns file to caseworker with appropriate case notes.

   b. If the request is appropriate and correct, makes appropriate case notes and returns file to caseworker with any necessary corrections.

Caseworker

3. Makes any corrections to affidavit, and prepares original and one copy. Prepares original and one copy of CS-405.12A, "Investigative Subpoena." Forwards original affidavit and subpoena form to Hearings Assistant. Retains one copy of each document in case file.

NOTE 1: Investigative Subpoena--User Access. The form CS-405.12A, "Investigative Subpoena" will be available on SEARCHS at a later date. Until it is placed on SEARCHS, it will be available in WordPerfect.

NOTE 2: Adjusting Subpoena Language--Requesting Information in CSED Form. The caseworker should consult a CSED Staff Attorney if questions of special usage or language arise. For example, if the investigative subpoena is being used to compel a party to provide the specific information called for in a CSED paternity or financial Affidavit, the language should be adjusted to command the party to produce the "information" rather than the "documents, records, or files," and to inform the party he/she may comply informally by sending the requested "information" to the CSED in the form of a completed, signed, and notarized paternity or financial affidavit, with any appropriate attachments. If the party chooses to appear in person to provide the information, procedures in step 9 apply.

Hearings Assistant

4. Checks completed subpoena form for completeness, form, and accuracy. Forwards acceptable packets to Hearing Officer for review and signature. If unacceptable, returns to caseworker for correction.

Hearing Officer

5. Reviews investigative subpoena and affidavit. Determines whether the requested information/documents are relevant and whether production would be unduly burdensome. If acceptable, signs investigative subpoena and returns to Hearings Assistant. If unacceptable, writes "Denied" across face of document, initials, and returns to Hearings Assistant.

Hearings Assistant

6. Affixes Department seal to signed subpoena form, makes three copies of the executed form. Arranges for service by certified mail, restricted delivery, return receipt requested; or, requests sheriff's praecipe from caseworker and arranges for sheriff's service. Retains original affidavit in hearing file. Retains one copy of subpoena for hearings file, and sends one copy to caseworker. If subpoena is denied, returns to caseworker.

Caseworker

7. Upon receipt of copy of issued subpoena, files in case file and monitors for return of service.

8. Upon return of service, notes date of service in the case file. Forwards original subpoena and sheriff's return to the Hearings Assistant. Retains a copy of sheriff's return of service in case file.

9. If in responding to investigative subpoena party insists on delivering information to CSED orally (see step 3, NOTE 2), arranges for party to give information under oath, and documents information given. Two most common methods of obtaining and documenting sworn oral information are given below--both require in-person interviews at CSED office:

   (1) Caseworker asks questions already printed in existing document, such as CSED paternity or financial affidavit, and completes form using answers given; caseworker then asks party to read completed document and sign declaration that information is true, in presence of a notary.

   (2) Caseworker arranges for party to be placed under oath at beginning of interview (regional office notary can administer oath), and for interview to be tape recorded; caseworker conducts interview by asking and obtaining answers to necessary questions.

   Other methods are also available; caseworker should consult with CSED Staff Attorney to determine method most suitable to particular case.

10. If party does not respond to subpoena, consults CSED staff attorney regarding enforcement options.

SUPERSEDES

CS 405.13, Direct Income Withholding Hearings, August 22, 1998

REFERENCES

MCA §40-5-157.

POLICY

LIMITED USE: It is the policy of the CSED to limit the use of these procedures to those rare occasions where regular referral of the case to Montana would result in a serious loss in enforcement effect. This policy presumes that income withholding contests involving Montana employers are handled more accurately and efficiently when Montana has full authority to enforce support in the case.

Direct Income Withholding. Under the direct income withholding provisions of Montana UIFSA law, an income withholding order issued in another state may be sent directly to an employer in this state for enforcement. The employer must comply with the terms of a direct income withholding order that appears regular on its face, but may seek assistance from the CSED in determining whether the order was issued by an appropriate authority or in distributing withheld amounts. Regardless of the terms of the order the employer must comply with Montana law in the areas of the employer's fee, the maximum allowable withholding, and the time frames for withholding and forwarding required amounts.

Contesting Direct Withholding. Montana UIFSA law also provides that the obligor may contest the direct income withholding order "in the same manner as if the order had been issued by a tribunal of this state." The CSED implements this provision by allowing the obligor to request an administrative hearing with the Office of the Administrative Law Judge.

Issues at Hearing. By law the hearing is limited to issues concerning the validity or enforcement of the direct income withholding order, such as whether due process was afforded prior to issuance of the order, whether the order correctly reflects the facts for which it was authorized, or whether the entity to which the order was directed qualifies as an "employer" for purposes of direct withholding. On some issues it may be necessary for the Administrative Law Judge (ALJ) to consider the income withholding laws or specific case records of the other state in deciding validity and enforcement.

The ALJ does not decide issues already decided by an appropriate tribunal in the other state, or issues the obligor had (or should have had) an opportunity to raise prior to issuance of the withholding order. For example, the ALJ does not decide the amount of arrears owed, or the existence of a support obligation.

The ALJ also does not decide issues concerning the manner in which the employer is enforcing the withholding order. These include (1) whether the employer is abiding by the terms of the order concerning payment amounts (current support, arrears, interest, and fees), payment duration, payee address, and medical support, and (2) whether the employer is complying with Montana law with respect to maximum withholding, employer fees, and time frames. For relief on these issues the obligor must apply directly to the tribunal that issued or obtained the withholding order.

Parties to the Hearing. Generally there are only two parties to the hearing: the obligor and the obligee. The CSED is not a party in the matter, and is not responsible for defending the direct withholding order. The "obligee" is the party that issued or obtained the direct withholding order; generally, this is either the IV-D agency in the other state (acting on behalf of the custodian) or the custodian herself/himself, if there is no IV-D case. The parties to the hearing must provide any evidence they wish the ALJ to consider, including information specific to the other state.

Form of Request. For purposes of these procedures any writing from the obligor contesting the validity or enforcement of the direct income withholding order, or containing any equivalent statement, qualifies as a request for a direct income withholding hearing.

PROCEDURES

Caseworker

1. Upon receiving a written request from the obligor for a direct income withholding hearing, immediately date-stamps and faxes the request to
   - the Office of the Administrative Law Judge (OALJ), and
   - the Interstate Regional Manager.

   Follows immediately with the original by regular mail to the OALJ. Does not open a CSED case or process receipt of the request on SEARCHS.

Interstate Regional Manager

2. Immediately upon receiving a copy of a request for a direct income withholding hearing contacts the obligee and attempts to obtain a IV-D interstate referral or, in a non-IV-D case, a direct application. If a referral or application is not possible, identifies the obligee's correct mailing address and any necessary protections, for use by the OALJ.

   If a referral or application is agreed, requests that the obligee immediately issue or obtain an order terminating the direct withholding order. Upon receipt of a copy of the terminating order, immediately informs, and forwards a copy to, the OALJ. Proceeds with income withholding for the new case as provided in section CS 510.1 or 510.3.

Hearings Assistant

3. Upon receipt of a written request for a direct income withholding hearing either directly from the obligor or indirectly through a regional office, date-stamps the request and submits it to the Administrative Law Judge (ALJ) for a decision to grant or deny; proceeds to step 5 or 7.

Administrative Law Judge (ALJ)

4. Reviews the request. If the obligor is contesting the validity or enforcement of the direct income withholding order (see POLICY re: "validity and enforcement" issues), grants the hearing; otherwise denies the hearing.

Hearings Assistant

5. If the hearing is denied, prepares and obtains the ALJ's signature on an order denying the hearing. Sends copies of the order to all parties, the Interstate Regional Manager, and the CSED Employer Relations Specialist; takes no further action.

Employer Relations Specialist

6. Upon receiving a copy of a CSED order denying a request for a direct income withholding hearing, reviews the reasons for the request and the denial. If there is an issue involving the manner in which the employer is enforcing the withholding order, contacts the employer and attempts to informally resolve the issue or educate the employer as appropriate.

Hearings Assistant

7. If the hearing is granted, opens an OALJ case; if necessary contacts the Interstate Regional Manager for assistance in determining the parties' identities and addresses.

   As soon as possible after receipt of the request, prepares and issues a Notice and Order for Direct Income Withholding Hearing scheduling an administrative telephone hearing for a date within a reasonable time of the notice. Mails copies of the notice to all parties by regular United States mail; also sends a copy to the Interstate Regional Manager. Retains the original in the case file record and calendars the hearing. Forwards the case file to the ALJ prior to the hearing date.

8. [IF APPLICABLE] Upon receiving a copy of an order terminating the direct income withholding order, immediately informs the ALJ and prepares and issues, on the motion of the OALJ, an Order Dismissing Hearing on the grounds that the issues are moot. Mails copies of the order to all parties by regular United States mail. Retains the original in the case file record.

Obligor, Obligee

9. Prepare respective cases for hearing according to instructions received from the OALJ.

ALJ

10. Conducts the administrative telephone hearing, limiting the issues to those concerning

the validity and enforcement of the withholding order. Prepares a written decision and order within a reasonable time after the close of the hearing record.

Hearings Assistant

11. Completes the certificate of mailing for the decision and order. Mails copies of the decision and order to all parties by regular United States mail; also sends a copy to the CSED Employer Relations Specialist. Retains the original in the case file record. (Does not report the decision to MONTLAW, since it has no value as Montana precedent.)

SUPERSEDES

CS 405.20, Federal Tax Intercept Supervisory Reviews, November 1, 1989.

REFERENCES

State v. Frank, 226 Mont. 283, 735 P.2d 290 (1987).

POLICY

A CSED federal offset hearing is available to any obligor dissatisfied with the results of an administrative review conducted by the regional manager in section CS 508.5. A hearing is also available to an obligor denied a review under the procedures in that section. The hearing is available at any time after a federal offset has actually occurred.

The purpose of the federal offset hearing is to satisfy the procedural due process requirements set forth in State v. Frank. Case law from this decision requires a full evidentiary hearing on the record by a hearing officer before the CSED can retain any money to satisfy arrearages accrued under an administrative order. Because the CSED updates the amount of arrears available for offset on a monthly basis, any given offset collection can include amounts accrued but not yet adjudicated by the CSED.

There is no Montana law granting "contested case" status to a CSED federal offset action; consequently, the decision from the federal offset hearing is not subject to judicial review. Any judicial remedy must be pursued in state, federal, or tribal court, as appropriate. Likewise, time frames associated with the federal offset hearing are set by CSED policy only, none being required under state or federal law.

PROCEDURES

Office of the Administrative Law Judge (OALJ)

1. Upon receiving a written request for a hearing concerning a federal offset administrative review, promptly identifies the case on SEARCHS, enters a SEARCHS case note for the request received, and generates a cover sheet listing the case number and identifying the package as a request for a federal offset hearing. Makes a copy of the request and any accompanying documents, and sends the copy with the cover sheet to the appropriate caseworker.

Caseworker

2. Upon receiving a copy of the federal offset hearing request from the OALJ, proceeds as follows:

    a. Immediately places a hold on disbursement of any offset collections received toward non-TANF arrears in the case. Removes the hold if the hearing is denied in step 6; if the hearing is granted, awaits the outcome of the hearing.

    b. Researches the case to determine whether both of the following conditions are met:

(1) The CSED has conducted (or has denied) an administrative review of the submission of the case for federal offset.

NOTE: Review Required in Existing "Case." For purposes of determining whether an administrative review has occurred, the "case" referred to is the case last submitted. If the CSED previously submitted the obligor's arrears, then deleted the case when the arrears were paid off, then later submitted new arrears that accrued after the deletion, the submission after the deletion is considered a new "case" for federal offset purposes. The requirement for an administrative review will be satisfied only if there has been a review in the new case.

(2) An offset in the submitted case has actually occurred. Proof of offset may be a copy of the FMS Notice of Offset, a listing in the OCSE monthly collection report, a SEARCHS payment record with the appropriate pay source, or (for incoming transfer cases, see section CS 508.5) the payment record of another state.

In special situations where there is reason to believe an offset has occurred but the Financial Management Service (FMS) has not yet notified the CSED, contacts the federal Office of Child Support Enforcement (OCSE) Special Collections Unit and requests confirmation. (It may be necessary to make this request through the TAPP Supervisor.)

3. Within 5 working days of receiving the copy of the hearing request, prepares an affidavit stating the results of the research in step 2b; if applicable, attaches a copy of the administrative review decision or denial, or the proof of offset; signs the affidavit in the presence of a notary; and sends the original affidavit and any attachments to the OALJ, retaining a copy for the case file. Enters a SEARCHS case note for the affidavit prepared and sent.

   In a separate communication, informs the OALJ of any dates or times the caseworker is not available for a hearing.

OALJ

4. Upon receipt of the affidavit sent in step 3, attaches the affidavit to the hearing request and forwards the request to the Administrative Law Judge.

Administrative Law Judge (ALJ)

5. Reviews the information in the affidavit and the hearing request and determines whether there is evidence the conditions in step 2 are met.
   a. If so, grants the hearing and proceeds to step 9.

b. If not, denies the hearing; proceeds to step 7 if applicable.

OALJ

6. Within 10 working days of receiving the original hearing request, prepares, obtains the ALJ's signature on, and issues according to the determination in step 5, EITHER

    - a Notice and Order for Federal Offset Hearing, granting the hearing, setting a hearing date no fewer than 5 and no more than 10 working days in the future, and providing instructions for the telephone hearing and the exchange of exhibits, OR

    - an order denying the hearing. The order must state the reasons for the denial and attach a copy of the caseworker's affidavit. The order must inform the obligor the denial will remain in effect until such time as the obligor provides evidence that (a) an administrative review of the submission for offset has been conducted or denied, and (b) an offset based on the submission has actually occurred. The order does not contain a provision for judicial review.

    Sends copies of the order (granting or denying) to the obligor, the caseworker, and in a non-TANF case the obligee; retains the original in the hearing file.

    If a hearing is granted and the obligor requests a postponement in writing, refers the request to the ALJ; if the ALJ determines there is good cause, enters a SEARCHS case note and reschedules the hearing for a later date.

    If a hearing is denied and the obligor later requests a hearing on the same matter in writing, refers the request to the ALJ and takes appropriate action following the determination in step 7.

ALJ

7. Upon receipt of a subsequent request for a hearing from an obligor whose original request was denied in step 6, reviews the obligor's request and determines whether there is now evidence the conditions in step 2 have been met. If so, grants the hearing and proceeds to step 9. If not, denies the hearing and takes no further action.

Caseworker

8. If a hearing is granted, prepares exhibits, arranges for witnesses, and prepares a list of witnesses and exhibits. By the exhibits due date, sends the original exhibits and the list to the OALJ; sends copies of the exhibits and list to the obligor and, in non-TANF cases, the obligee.

ALJ

9. Conducts a full evidentiary hearing on the federal offset. Issues at hearing are limited

to the following:

(1) Whether the amount of arrears certified for the period up through the actual offset was correct.

(2) Whether the federal payment was properly subject to offset in this case.

(3) Underlying issues such as
  - whether the CSED had jurisdiction and authority to act in retaining the offset to satisfy the arrears; or
  - whether there was a mistake of fact concerning the obligor's identity or the existence of the support obligation.

(4) If applicable, whether the administrative review was properly denied on the basis of a previous opportunity to raise the contested issues.

If the obligor fails to appear for the hearing and no good cause for postponement has been shown, deems the request for hearing withdrawn, and instructs the hearing assistant to issue an order dismissing the hearing.

Evaluates the hearing record and makes a determination on the issues. If the administrative review was improperly denied, does not remand the case to the regional manager, but proceeds to determine any issues raised in (1) through (3) above. Enters a SEARCHS case note for the hearing held.

OALJ

10. Within 5 working days after the hearing is held, prepares, obtains the ALJ's signature on, and issues a CSED decision and order; the decision and order does not contain a provision for judicial review. Sends copies to the obligor, the caseworker, and in non-TANF cases the obligee. Enters a SEARCHS case note for the decision and order sent.

Caseworker

11. Upon receipt of the hearing decision and order, provides a copy to the regional manager or, in an incoming transfer case, sends a copy to the submitting state. Implements the order as follows:

    a. If the order upholds the amount of arrears and the pay sources available for offset, removes any hold placed on disbursement of the offset collection in step 2a, and takes no further action.

    b. If the order changes the amount of arrears or the pay sources available for offset, proceeds in any substeps below that apply.

    i. Requests the appropriate adjustment from TAPP; includes the date of the hearing decision in the adjustment request. Does not delay initiation of the adjustment process pending receipt of the offset funds from FMS.

    ii. Immediately alerts the TAPP Supervisor to the review-related adjustment, for purposes of the special weekly update required in section CS 508.3.

    iii. If required by the terms of the decision and order, excludes the case from future, pay source-specific offsets by suppressing the offset type(s) on SEARCHS.

TAPP Supervisor

12. Upon being notified of an adjustment in step 11, notifies OCSE of the change in the submitted amount within 10 working days after the hearing decision.

    [*IN PROGRESS*>> At the time of this writing an enhancement to automatically identify and report these adjustments to OCSE was not in place; until it is, the caseworker and TAPP Supervisor must continue to work together to comply with the federal time frames via manual process.]

    Also, until the special weekly update required in section CS 508.3 is in SEARCHS production, if the adjustment results in a refund of an offset amount, notifies OCSE of the refund within one week of issuance.

SUPERSEDES

CS 408.3, Review and Modification of Support Order, September 26, 2002

REFERENCES

42 USCS § 666(a)(10); 45 CFR § 303.8; MCA §§ 40-4-208(2), 40-5-149, 40-5-150, 40-5-226(3), 40-5-271 through 40-5-278, 40-5-907(6), and 50-15-302; ARM 37.62.146, and ARM 37.62.2103 through 37.62.2107; *Marriage of Cowan*, 279 Mont. 491, 928 P.2d 214 (1996).

DEFINITIONS

The following definitions apply for purposes of review and modification only:

PARTY TO THE ACTION. A person who (1) is obligated by the existing support order, (2) may be obligated by the modified order, or (3) is named as a party in the existing court order.

PARTY TO THE REQUEST. A person or agency who is (1) a party to the action as defined above, (2) a non-obligated custodian in the existing or modified administrative support order, or (3) another state requesting modification on behalf of a child in substitute care (foster care or juvenile corrections).

POLICY

Review and Modification. Every three years the CSED provides notice to each parent or non-obligated custodian subject to a support order in a CSED case (except incoming interstate cases) that he or she may request review and possible modification of the support order. The opportunity for a three-year review is available regardless of any showing of change of circumstances.

If a parent or custodian requests a review less than three years after the support order was established or last reviewed, the CSED will grant the request only if certain conditions apply. If a review is granted the CSED will determine whether modification of the order is appropriate and, if so, will initiate a modification action. By law the first payment date named in the modification action may be no earlier than the date all the parties to the action received notice of the review.

Special Characteristics. Modification of a support order is different from all other CSED actions in that it involves--at the request stage--not only the parents but also any applicable third-party custodian or other state. This is the result of the transition from the old to the new support order, when subcases and roles may be changing and the total case must be considered for impacts on all the obligations.

Jurisdiction. To conduct a review and, if appropriate, to modify a support order the CSED must have personal jurisdiction over the parties to the modification action, as described in MCA 40-5-145 or 40-5-231. (Generally, jurisdiction is established if the party is served with notice in Montana, has resided in Montana with or while supporting the child, has caused the child to live in Montana, or could have conceived the child in Montana.)

The CSED must also have jurisdiction over the support order. Jurisdiction may be in the form of continuing, exclusive jurisdiction (CEJ) as defined by MCA 40-5-149, or concurrent jurisdiction authorized by other applicable statutes. The jurisdiction determination depends on certain case facts, such as the current states of residence of the obligor, the obligee, and the children named in the order; whether the obligor or the obligee requested the review; and the identity of the state that issued the order. See the table at the end of this section for the complete factors and outcomes in determining jurisdiction over the support order.

Four-Stage Process. The CSED conducts review and modification in four stages, at increasing levels of formality. In the first stage the CSED receives a request for review, then screens, investigates, proceeds with, or denies the request. Activities at this level involve all the parties to the request.

In the next stage the CSED notifies all the parties to the request that a review will be conducted, performs a preliminary guidelines calculation, and holds a statutory review session with each party to the action. Parties to the request who are not parties to the action are excluded at this point.

In the next stage the CSED initiates and resolves a contested case action to modify, or decline to modify, the support order. At this level there is an opportunity for a statutory modification hearing to contest the action. Review and modification of an administrative support order ends with this stage.

The fourth stage (judicial level) applies for court-issued support orders only. Under Montana law any modification of a court order must be entered by a Montana district court. The CSED decision and order from stage three is not effective as a final modification order until it is filed with and approved by the applicable court. The parties may contest the CSED's order by requesting a hearing with the court, and the court may adopt, modify, reject, or remand the order.

Time Frames. Federal regulations require that the CSED conduct a review, and modify the order or determine that the order should not be modified, within 180 calendar days of receiving the request for review and locating the other parties to the request. The requirement applies to modification of court orders as well as administrative orders. The time is not extended to accommodate the additional steps (or delays) involved in obtaining a final modification from the district court.

Limited Review. Montana law allows for "limited review" of a support order at the application of any party (defined as party to the request). The purpose of a limited review is to address a change not caused by a change in a parent's net income. Types of changes include physical custody, day care needs, a child's special needs, the cost of health insurance, and the number of children in the case.

The law allows the CSED to recommend a change in the support amount based on the limited change and to modify the order outside the contested case process. If the parties do not agree with the CSED's recommendation or a change in net income is also involved, a contested case proceeding applies. The CSED has not established standard procedures for conducting limited reviews. The regional legal unit must consider and respond to requests according to individual case facts and general legal principles, including due process requirements and specific authority under MCA 40-5-278.

PROCEDURES

SEARCHS FORMS: Generation of the SEARCHS forms in these procedures requires special attention to the facts of the particular case. Heading formats in forms CS-408.3A and CS-408.3E are specially designed to reflect all the parties to the request; the parents that may be obligated to support the children; and the children that may be affected by a modification. In other forms proper generation depends on correctly identifying the circumstances of the modification action, the roles of the individuals or entities involved, and the characteristics of the existing support order. **Precise SEARCHS processing is necessary for statutory compliance.** See the detailed instructions available in the regions for properly generating all modification forms.

Caseworker

1. **Initiating a Review.** Upon discovering a CSED case that meets either of the conditions in (1) or (2) below, initiates a review for possible modification of the existing support order by taking action beginning in step 4c, omitting requirements for contact with the "requestor."

   (1) **Subsequent child.** A child of the biological unit has been added to the case for whom a support obligation has not been established, and a Subsequent Notice and Order Concerning Support (see section CS 401.6) does not apply.

   (2) **Significant change of circumstances.** The obligee in the case is receiving TANF benefits **and** the caseworker is aware a significant change of circumstances has occurred since the support order was entered or last modified **and** CSED action is in the best interests of the child. ("Best interests of the child" means a change in the support amount is essential to the reasonable enforcement of support, and the parent or custodian has declined to request a review.)

   A significant change of circumstances includes any of the situations described in (a) through (g) below:

   (a) A parent's net income has increased or decreased by 25% or more.

   NOTE: Incarceration Not a Decrease in Net Income. Under Montana case law, involuntary incarceration–in and of itself--is not so substantial and continuing a change of circumstances as to make an existing child support order unconscionable. Therefore, the CSED does not consider a decrease in income resulting from incarceration to be a qualifying condition for a review. However, review may be available if the requestor proves a 25% change in net income that is not related to the incarceration, **and** the incarcerated party waives any right he or she would have to an in-person hearing during the course of the review and modification process (see section CS 201.4, Temporarily Unworkable Cases).

(b) The existing support order was set without reference to the guidelines.

NOTE: Replacement in Lieu of Modification. If the existing support order is a CSED order, and the non-guidelines amount is the only "significant change of circumstances" in the case, the caseworker should proceed to **replace** the order instead of initiating review and modification in this section. Replacement is accomplished using a Motion and Order Replacing Support Order (MORSO), or a Notice of Intent to Vacate (NOIV), as applicable.(See section CS 401.5, or consult the regional NOIV representative.)

(c) There has been a change in parenting time (visitation) or in the party with whom a child permanently resides (custody), and there is written evidence or other acceptable demonstration of the permanent intent, **and** either the existing order or the modified order involves combined parenting as defined in section CS 404.1.

REMINDERS: If no combined parenting is involved, changes in visitation and custody are handled as follows:

(1) If the physical custody of all the children in the existing order changes from one parent to the other parent, the change creates an establishment case, not a modification case.

(2) If the physical custody of one or more of the children changes from the non-obligor parent to a third-party custodian, or vice versa, the existing order will follow the child without creating a change in support.

(d) The cost of day care services needed for the children has increased or decreased by at least 25%, and the change will continue for at least 18 months.

(e) A child has developed special needs that did not exist when the existing order was entered, and the needs will continue for at least 18 months; or, special needs considered in the order no longer exist.

(f) The cost of health insurance provided by a parent has increased or decreased by at least 25%, and the change will continue for at least 18 months.

(g) A child has become emancipated, reached the age of majority, married, entered military service, or died, **and** the support order is not a per-child order.

NOTE 1: Orders Not Providing for Medical Support. The CSED does not initiate a review and modification action solely to add a provision for health insurance coverage to the support order. Instead, the CSED requires the obligee to obtain a modification; if the obligee does not comply, the CSED initiates non-cooperation or case closure procedures (see section CS 520.3).

NOTE 2: Orders Not Considering Social Security Benefits. The Cowan decision issued by the Montana Supreme Court in November of 1996 established that the amount of a disabled obligor's support obligation is automatically decreased by the amount of Title II social security benefits paid to the child on behalf of the obligor. Therefore, modification of the support amount for the sole purpose of subtracting the social security payment from the support obligation is not needed; the CSED simply credits the payment to the obligor's current support account. If the obligation is greater than the social security payment, the case may be eligible for review (for purposes of the excess obligation) based on a significant change of circumstances, such as a change in net income.

2. **Issuing Form CS-408.3A, Request for Review.** Upon being contacted for a modification by a person or state meeting the definition of "party to the request" (see POLICY), generates form CS-408.3A, Request for Review, as in 2a or 2b below. (SEARCHS will automatically generate form CS-408.3A1, Review Notice (RENO) to accompany the Request for Review.) Prepares and sends the Request packet as in 2c.

   If contacted for a modification by the IV-D agency of another state in a case where the children are not receiving substitute care, informs the state that the parent or custodian that resides in the state must request the review; proceeds in 2a through 2c below for the parent or custodian as the requestor.

   a. If the requestor is a parent, selects the Request for Review that includes a RENO **with an Order to Produce.** The Order to Produce orders the parent to submit financial information, including a Financial Affidavit enclosed with the RENO.

   b. If the requestor is not a parent (a third-party custodian or another state), selects the Request for Review that includes a RENO **without an Order to Produce.**

   c. Prepares a packet containing
      - form CS-408.3A, Request for Review;
      - form CS-408.3A1, RENO (signed by the caseworker, and stapled separately); and
      - form CS-404.6A, Financial Affidavit.

      Sends the packet by regular mail to the requestor; takes no further action until the signed and completed Request for Review is returned.

   NOTE: Operation of the RENO with the Request for Review. The RENO that accompanies the Request for Review is **not** the same as the stand-alone RENO prepared in step 5. The purpose of the "accompanying" RENO is to satisfy the statutory requirement for service of notice on the requesting party. Service is accomplished by an acknowledgment contained in the signed and returned Request for Review.

3. **Screening the Request for Review.** Upon receiving form CS-408.3A, Request for Review from a party to the request, checks to see if the form is properly signed and completed, and is accompanied by the necessary financial information and verifications.

   NOTE 1: Request Withdrawn. If the requestor withdraws the request at any point before Review Notices are issued in step 5, the caseworker should acknowledge the withdrawal in writing and enter an appropriate SEARCHS case note; no further action in this section is necessary.

   NOTE 2: Case Closed by Other Party. If at any point in these PROCEDURES a party to the request closes the IV-D case, and the CSED has reason to believe that another party to the request is aware a review or review request is pending, the CSED is required to notify the party and allow the party to continue the review by opening a case. The CSED sends form CS-408.3K, Letter Re: Case Closure, by regular mail, with a non-TANF application. The party must submit the application within 23 days of the date of the letter; if not, the review and modification process is terminated. (The notification requirement does not apply to parties to the request who are not eligible to apply for CSED services, or in cases where the case was closed as the result of a good-cause determination.)

   a. If the Request for Review is substantially complete (see the NOTE following step 3b), enters the appropriate SEARCHS case notes for the request received, the Financial Affidavit received (if applicable), and the RENO served by acknowledgment on the date the request was signed. **Completes the applicable steps in the remainder of this section within 180 calendar days of the date the request was received.**

      Investigates to determine whether review of the existing support order is available, then proceeds to step 4. Review is available for an open CSED current enforcement case if all of the following conditions apply:

      (1) The CSED has jurisdiction to modify the order (see POLICY).

      (2) Modification services are not being provided by another child support agency.

      (3) Modification action is not pending in another administrative agency or court.

      (4) The support order will not terminate for at least six months after the date the Request for Review is received.

(5) The CSED can obtain sufficient reliable information--from its records or from other parties to the request--to perform a guidelines determination.

(6) At least thirty-six (36) months have elapsed since the existing support order was entered or last reviewed

-OR-

Thirty-six (36) months have not elapsed but there are sufficient grounds for review on the basis of one or more of the following facts (see step 1 for more detail):

(a) The existing order does not contain a provision for medical support.

(b) A subsequent child as defined in section CS 401.6 is being added to the case, and replacement under MCA 40-5-225(10) does not apply.

(c) There has been a significant change of circumstances, as defined in step 1, item (2).

NOTE: Request Based on Non-Guidelines Order. Under the Administrative Rules of Montana a review must be available when the order is not based on the guidelines. However, speedier administrative procedures for changing the support amount are available if the support order was issued by the CSED. (See the NOTE following item (2)(b) in step 1.) In these cases, the caseworker may suggest (but not require) that the requestor withdraw the request to allow the CSED to proceed with the replacement action.

b. If the Request for Review is not substantially complete (see the NOTE below), contacts the requestor in writing and explains the request cannot be processed until the missing information is received. In the case of a missing signature or notarization, encloses the requestor's original document to be signed or notarized. If the Request is incomplete only because the requestor failed to check one of the boxes on the form, a telephone call to identify the intended box(es) is acceptable.

Enters a SEARCHS case note for the incomplete request received and the action taken. Returns to step 3a only if the missing information is provided; otherwise, takes no further action in this section.

NOTE: Complete Request Defined. A Request for Review is substantially complete for purposes of initiating review and modification proceedings if it contains

- the requestor's signature;
- a completed, signed, and notarized Financial Affidavit (if the requestor is a parent);

- other financial information needed to verify net income, for example tax returns and pay stubs (if the requestor is a parent); and
- written verification for any claim that income or custody has changed, or that support was not based on the guidelines (unless the CSED can verify the claim without information from the requestor).

Although the CSED asks the requestor to provide certified copies of the applicable support order(s), the Request is substantially complete without them. Any certified copies not provided by the requestor will be obtained by the CSED during the registration process.

4. **Granting/Denying the Request for Review.** Proceeds in steps 4a through 4c as applicable.

   a. **Personal Jurisdiction.** If the CSED does not have personal jurisdiction over one or more parties to the action, determines (1) whether review and modification by the CSED would be beneficial to the enforcement of the case and, if so, (2) whether each of the parties involved is likely to consent to Montana's obtaining personal jurisdiction.

      If CSED jurisdiction would be beneficial and consent is likely, prepares and sends form CS-408.3D, Waiver of Personal Jurisdiction for Modification to each party identified. If jurisdiction is obtained proceeds in step 4c. If not, or if an attempt to obtain jurisdiction is not appropriate, proceeds to step 4b.

   b. **Review Denied.** If review is not available because the case does not meet the conditions in step 3 (and the exception in NOTE 1 below does not apply), prepares and sends to the requestor by regular mail form CS-408.3B, Denial of Review Request (DORR), advising the requestor the support order is not eligible for review or possible modification, identifying the reason(s) for the denial, and allowing the requestor 33 days to request a hearing. The DORR also withdraws the RENO acknowledged by the requestor if the requestor does not request a hearing. Proceeds in step 4b(i) or 4b(ii) below as applicable.

      i. If the requestor contests the denial by timely requesting a hearing, follows regular CSED procedures for identifying the issues, preparing for the hearing, attending the hearing as a witness, and entering a SEARCHS case note for the hearing order received. If the Administrative Law Judge determines the order is eligible for further review and possible modification, proceeds to step 4c. Otherwise proceeds in step 4b(ii).

      ii. If the requestor does not timely request a hearing, or if the Administrative Law Judge upholds the denial, takes no further review action in this section. For an ALJ denial, enters a SEARCHS case note.

      NOTE 1: Jurisdiction Over Support Order, Montana Not Responding State. If review is not available because the CSED does not have jurisdiction to modify the support order, **and** the case is an interstate initiating or non-interstate case, the DORR is not appropriate. Instead the CSED issues form CS-408.3R, Jurisdiction of Other State, informing the requestor the State of Montana does not have jurisdiction to modify the support order, and providing the name of the state that has or may have jurisdiction. This form does not provide an opportunity for hearing; however, the requestor may ask the CSED to petition the other state for a modification on the requestor's behalf. No further action under this section is necessary.

NOTE 2: Denial Involving Subsequent Child. If the Request for Review identifies a subsequent child as defined in section CS 401.6, Subsequent Notice and Order Concerning Support (SNOCS), and SNOCS procedures apply, the caseworker must initiate the SNOCS action or continue with any SNOCS in progress. The DORR should state that the CSED is converting the request to apply to another administrative process that will add the child to the order.

NOTE 3: Denial Involving Native American Jurisdiction. If the reason for denial is lack of jurisdiction, and the case is a Native American case, the DORR should state that the CSED declines to conduct a review because it would infringe on tribal sovereignty and the requesting party has not provided a waiver from the tribal court.

NOTE 4: Judicial Review Not Available. DORR hearings are not contested case hearings under MCA section 2-4-102 and are not subject to judicial review.

c. **Review Granted--Preliminary Steps.** If a review is available because the case meets the conditions in step 3, or is granted based on the outcome of step 4a, investigates in steps 4c(i) through 4c(iii) below as applicable, then proceeds to step 5.

   i. **Controlling Order.** If there is more than one enforceable support order in the case, works with the regional legal unit to obtain a controlling order determination, and proceeds in the remainder of this step (4c) for the controlling order only.

   ii. **Registration.** Identifies the status of the existing support order for purposes of registration. If the order was not issued by the CSED, it must be registered according to the procedures in section CS 408.7, Registration of Support Order (for Modification).

   iii. **Attorneys of Record.** If the existing support order was issued by a court, identifies any original attorneys of record who have not withdrawn. The caseworker may identify these attorneys by sending form CS-408.7AL, Letter to Clerk of Court Re: Attorneys of Record. The form is available on SEARCHS with the Notice of Registration (see step 4c(ii) above) and can be sent with the court's copy of the Notice in step 5. Or, the caseworker may use any other reliable means to identify attorneys of record.

NOTE: Attorneys of Record and SEARCHS Attorneys. In cases involving modification of a court order, Montana law requires that the CSED provide copies of new court filings to the "parties and their counsel of record in the administrative and court proceedings." In addition, CSED policy requires that copies of all documents issued in the administrative action be sent to the parties' attorneys listed on SEARCHS. The combination of these requirements may, in rare cases, lead to a situation where a party has two attorneys who must receive copies of documents issued by the CSED in the modification action.

5. **Review Notice (and Notice of Registration if Necessary).** For each party to the request (except the requestor), generates and signs form CS-408.3E, Review Notice (RENO). The RENO contains a selectable Order to Produce, which orders a parent to submit financial information to the CSED and the other parties.

Also generates form CS-408.7A, Notice of Registration, if registration of the support order is necessary.

Generates other forms as needed for obtaining jurisdiction or identifying attorneys as described in step 4.

Prepares the following packages and arranges for service by certified mail, personal service, or acknowledgment, unless otherwise noted; combines packages for the same person or entity as applicable:

1. **PARTY TO ACTION--PARENT.** To each parent who is a party to the action, except the requestor:
(1) RENO with Order to Produce (original).
(2) Form CS-404.6A, Financial Affidavit.

2. **PARTY TO REQUEST--PARENT.** To any parent who is a party to the request but not a party to the action, except the requestor:
(1) RENO without Order to Produce (original).
(2) Form CS-404.6A, Financial Affidavit, accompanied by a note asking the parent to assist the CSED by completing and returning the form.
FOLLOW-UP: If the parent does not return the Financial Affidavit within 10 days of service, the caseworker should quickly proceed with an investigative subpoena as in section CS 405.12, directing the parent to submit the information within 20 days after service.

3. **NON-PARTY--PARENT.** To any located parent who is not a party to the request:
(1) Form CS-404.6A, Financial Affidavit.

(2) Form CS-405.12A, Investigative Subpoena, obtained according to the procedures in section CS 405.12, directing the parent to submit the information within 20 days after service.

OPTION: The caseworker may send a letter by regular mail in place of the investigative subpoena if there is a good chance the parent will cooperate within 10 days of the date the letter is mailed; if the letter is unsuccessful the caseworker should quickly proceed with an investigative subpoena.

4. PARTY TO REQUEST--NON-PARENT. To each non-parent who is a party to the request, except the requestor:

(1) RENO without Order to Produce (original).

5. PARTY TO REGISTRATION ACTION. If registration is required, to each party to the registration action:

(1) Notice of Registration (copy).

6. ISSUING TRIBUNAL. If registration is required, to the tribunal that issued the existing support order, by regular mail:

(1) Notice of Registration (copy).
(2) (If the tribunal is a court) Form CS-408.7AL, Letter to Clerk of Court Re: Attorneys of Record, with a self-addressed stamped envelope for return of the information.

7. OALJ. If registration is required, to the Office of the Administrative Law Judge, by regular mail:

(1) Notice of Registration (original).
(2) Certified copy of the existing support order.

6. **Evaluating Response to Review Notices.** Takes action in steps 6a through 6f as applicable, or proceeds directly to step 7, according to the responses to the packages served in step 5.

   a. **Request withdrawn.** If the party requesting the review withdraws the request at any point before the contested case action is initiated in step 10 or 11, acknowledges the withdrawal in writing, and sends a letter to each of the other parties to the request stating the Review Notice issued in step 5 is withdrawn. Enters an appropriate SEARCHS case note and takes no further action in this section.

   b. **Exchange of financial information.** If a parent submits a Financial Affidavit in response to package 2 or 3 in step 5 (letter or investigative subpoena), sends a copy of the information to the other parties to the action.

   CAUTION! SAFEGUARDING INFORMATION. If the parent submitting the Affidavit is a SEARCHS participant, and there is a domestic violence indicator on SEARCHS for that parent as the victim, removes from the Affidavit all information concerning the parent's whereabouts (telephone, address, employer) before releasing to the other parties. If the parent is not a participant on SEARCHS, removes the parent's social security number and all information concerning the parent's whereabouts (telephone, address, employer) before releasing the Affidavit to the other parties, regardless of whether any risk of harm is known.

c. **Unable to serve RENO.** If any party to the action cannot be served despite diligent efforts to locate the individual, terminates the proceedings according to step 6f. In questionable cases consults the regional legal unit.

   NOTE: Party to Request. If a party to the request (who is not a party to the action) cannot be served despite diligent efforts to locate the individual, the caseworker should document the attempts and proceed with the review and modification action for the other parties.

d. **Unable to obtain financial information.** If any person ordered to produce financial information fails to do so within 20 days after service of the RENO or investigative subpoena (or by a later date set by the caseworker), and the caseworker determines there is not sufficient reliable information to perform a valid guidelines calculation, terminates the proceedings according to step 6f.

   EXCEPTION 1: If the requestor was directed by the CSED to request a modification for the purpose of adding a provision for medical support to the support order, the CSED will proceed with the review and modification action, using the best available information.

   EXCEPTION 2: If the caseworker determines that the review and modification action is essential to reasonable enforcement in the case, the caseworker may (1) proceed with the review and modification action using the best available information or (2) consult with the regional legal unit concerning further action to compel the party to produce the information.

e. **Registration Hearing Granted.** If a registration hearing is requested and granted, suspends all action in the review and modification proceeding until the registration issue is resolved (see section CS 408.7).

   If the hearing decision and order vacates the registration, terminates the proceedings according to step 6f.

   If the registration hearing decision and order confirms the registration, proceeds with the review and modification action at the point it was suspended.

f. **Terminating the Review.** Upon determining in steps 6c through 6e that further review is not appropriate, prepares and sends to the requestor by regular mail form CS-408.3B, Denial of Review Request (DORR).

i. If the requestor contests the termination by timely requesting a hearing, follows regular CSED procedures for identifying the issues, preparing for the hearing, and attending the hearing as a witness. If the Administrative Law Judge determines further review of the existing order is appropriate despite the issue identified in steps 6c through 6e, proceeds to step 7; otherwise proceeds to step 6f(ii).

ii. If the requestor does not request a hearing, or if the Administrative Law Judge determines further review of the existing order is not appropriate, sends a letter to each party who was issued a RENO in step 5, stating the RENO is withdrawn. Enters the appropriate SEARCHS case note, and takes no further action in this section.

TERMINOLOGY: Beginning in step 7 the term **parties** refers to the parties to the modification action, as defined at the beginning of this section, unless otherwise noted.

7. **Preliminary Guidelines Calculation; Scheduling Review Session.** Upon service of the packages in step 5, and after any delays in step 6 have been resolved, performs a preliminary guidelines calculation according to the instructions in section CS 404.1, based on
   - the information submitted by the parents;
   - any information submitted by a non-obligated party to the request, if the information appears relevant and reliable; and
   - any other pertinent information resulting from investigation by the caseworker.

   Sets an appropriate time and date for a telephone review session with each party. Prepares and sends to each party form CS-408.3M, Letter Scheduling Review, along with the guidelines worksheet(s) containing the preliminary calculation.

   REMINDER--SPECIAL CALCULATION: ARM 37.62.146 requires a special method of calculation in a case where one of the parents has a child who
   - is not the subject of the modified order (does not belong to the biological unit), **and**
   - was born after, or whose support order was entered after, entry of the existing order.

   The method requires two calculations: one calculation includes the child as an "other child" for guidelines purposes, the other calculation does not. If both calculations increase (or decrease) existing support, the calculation with the lesser increase (or decrease) applies. If the calculations result in one increase and one decrease, no modification is available. However, since this is a preliminary calculation, the caseworker should send both the increasing and the decreasing calculation to the parties, and should explain at the review session that if the final calculations result in one increase and one decrease, the modification will be denied.

8. **Review Session.** Does not proceed in this step before the earlier of
   - 20 days after the last order to produce or investigative subpoena was served, or
   - the date all financial information ordered in step 5 has been received.

Holds a separate, informal review session by telephone with each party. (Note that the CSED does not hold a review session with a non-obligated party to the request, even if the person or entity is the requestor.) A party may appear in person at the review session at the party's own expense.

The review session includes the following elements:

(1) Confirmation the party received the other parent's financial information. If the party does not have the information, arranges to send the information either by fax during the review session (if practical) or by regular mail after the review session is over. Observes the caution in step 6a for safeguarding information in **any** records released to the parties.

(2) Review of the guidelines calculation. The party is asked to confirm or refute each piece of financial information used in the calculation.

(3) Review of other provisions to be included in the modified order (income withholding, enrollment of the children in the employer's health insurance plan, other medical provisions, requirement that parties update personal information with the CSED, etc.).

(4) Warning to the party that a modified support order may require the person now named as the obligee to pay a monthly transfer payment to the other party.

(5) Warning to the party that any facts not disputed during the review session may **not** be contested at any later hearing in step 10 or step 13.

(6) If the existing order is a court order, review of information needed to complete the Montana State Case Registry and Vital Statistics Reporting Form. Supplies of this form are available in the regional office; the form is also available and can be completed on the Internet, but must be submitted in hard copy. (This is the "statistical report" required in MCA section 50-15-302. The purpose of the form is to facilitate transmission of information from the court to the Central Case Registry (see section CS 200.3) when the court enters the final modification order. The CSED delivers the form to the clerk of court in step 19.)

(7) Documentation. Enters a SEARCHS case note describing the issues reviewed; also documents the warnings given and any confirmation of information received. If applicable, documents the non-appearance of the party.

(8) Presumed agreement. If a party does not appear for a review session, presumes the party's agreement with the preliminary calculation and proceeds in step 9.

9. **Determining the Modification.** After completing the review sessions, conducts any necessary further investigation or recalculation, determines whether modification of the

existing support order is appropriate, and proceeds in step 10 or step 11 as applicable. Modification is appropriate if either

(1) The difference between the existing support amount and the modified support amount is equal to or greater than $25 per month (and modification is allowed under the REMINDER in step 7, if applicable); OR

(2) The existing support order does not contain a provision for the medical support of the child.

NOTE: Withdrawing the Request. If the party requesting the review contacts the CSED to withdraw the request at any point after the contested case notice is issued in step 10 or step 11, but before the notice is finally resolved in step 10 or step 14, the party must file a written motion with the OALJ. The OALJ will respond to the motion according to the requirements of ARM 37.62.921.

10. **Notice of Modification Denial.** If modification is not appropriate, prepares and sends to the parties by regular mail form CS-408.3J, Notice of Modification Denial (NOMOD). The NOMOD contains the reason(s) for denying the modification, and allows the parties 13 days from the date of mailing to request a hearing.

    Upon resolution of the NOMOD in 10a or 10b below, sends an informational copy of the NOMOD--or, if a hearing was requested, of the final decision and order from the hearing--to any party to the request who is not a party to the action.

    a. If a party contests the denial by timely requesting a hearing, follows regular CSED procedures for identifying the issues, preparing for the hearing, and attending the hearing as a witness. Upon receipt of the final decision and order from the hearing, enters the appropriate SEARCHS case note and proceeds as follows:

        i. If the final decision and order finds that modification of the existing **court order** is appropriate, notifies the paralegal that a filing in step 15 is required. (For a foreign court order also notifies the OALJ and updates SOD, as in step 11c.) Monitors for receipt of the final court order and follows applicable procedures in step 17c at that time.

        ii. If the final decision and order finds that modification is not appropriate, or that modification of the existing **administrative order** is appropriate, proceeds with enforcement, updating SOD if applicable (modified order); takes no further action in this section.

    b. If no party timely requests a hearing, takes no further action in this section.

    NOTE: Status of NOMOD Hearings. NOMOD hearings are contested case hearings under MCA section 2-4-102, and are subject to judicial review. They are conducted in the same manner as modification hearings in step 13, except that contestable issues are limited to those alleged in the NOMOD.

11. **Modification Notice and Order.** If modification is appropriate, proceeds in steps 11a through 11c below.

    a. Prepares form CS-408.3G, Modification Notice and Order (MONO), containing the modified support order, a consent form, and a hearing request form. Generates the form with the title "Administrative" or "Proposed" depending on whether the existing order is an administrative order or a court order (see NOTE 1 below). Where applicable, adjusts the form according to NOTES 2 and 3 below.

    NOTE 1: Determining the Type of Order. If the existing order on SOD appears to be a Montana district court order, the caseworker should check to see if the order was truly issued by a Montana district court, or was issued by the CSED and abstracted to a Montana district court. Any order actually issued by the CSED is considered an administrative order for purposes of this section, **except as noted below.**

    EXCEPTION: If the order on SOD is an order issued by the CSED **that modified a court order**, the order is considered a court order for purposes of this section. (Modification of court orders was available to the CSED until August 31, 2000.)

    NOTE 2: Adjusting the MONO for Multiple Obligees, Multiple Obligors, or Parties Not in the SEARCHS Case. The MONO is designed to name only one obligor and one obligee in the heading, and to contain consent forms for only the obligor and the parent obligee. In cases where additional obligors or custodians must be included in the modified order, the heading should be adjusted for accuracy. In cases where a party to the action is not an obligor or obligee in the modified order, the caseworker, in consultation with the legal unit, must adjust the form to provide an opportunity for all parties to the action to consent to the modified order or to request a hearing.

    NOTE 3: Adjusting the MONO for Special Court Provisions. If the existing support order is a court order, any special provisions in the order that substantially conflict with standard CSED language must be retained in the modified order to the extent allowed by law. Special provisions may include the court's determinations on income withholding, emancipation, or other areas affecting the enforcement or duration of the order. The CSED must also retain the court's medical provisions in cases where the court has made specific findings that differ substantially from the standard CSED (OBRA 93) medical language.

    NOTE 4: Adjusting the Modification Action for Parties Not in the SEARCHS Case. Procedures in the remainder of this section assume the parties to the action are limited to the obligor and any parent obligee in the modified order. If this is not the case, procedures must be adjusted by the caseworker, in consultation with the supervisor or legal unit, to afford due process to all other parties to the action.

b. Arranges for service of the following package on all parties by certified mail, personal service, or acknowledgment; retains the originals for the file:
   (1) Form CS-408.3G, MONO (signed, copy).
   (2) Guidelines worksheets (final, copy).

c. If the existing order was issued by the court of another state, proceeds in 11c(i) and 11c(ii) below.

   i. Notifies the Office of the Administrative Law Judge (OALJ) it is now appropriate to abstract the order registered in step 5, and identifies the appropriate Montana district court. The appropriate court is the district court for the county of
      - the party who did **not** request the review, if both parties to the existing order live in Montana; or
      - the Montana resident, if only one of the parties to the existing order lives in Montana.

      In rare cases where no parties to the existing order live in Montana, determines the appropriate court in consultation with the regional legal unit, according to the facts of the case.

      (The OALJ must abstract the registered foreign court order to the district court, using form AB-REG, Abstract of Registered Order; the abstract must state that the registration is for purposes of modification only.)

   ii. Upon being notified of the new cause number assigned by the Montana district court, supersedes the foreign court order on SOS/SOD with an "abstract" order identical in terms but displaying the Montana court name, county, and cause number. For the abstract order enters text on the SOD screen that this order is effective FOR MOD ONLY. For the foreign court order enters text on the SOD screen that this order is still an ACTIVE ORDER FOR ENFORCEMENT/SUPERSEDED FOR MOD ONLY.

      (As a result of the superseding, both orders will have SEARCHS accounts attached; the foreign court order will have an end date.)

12. **Resolving the MONO.** When service has been obtained on all parties, monitors for response within 10 working days, deems the consent of any party who does not timely return a completed consent or request for hearing, and proceeds in 12a or 12b as applicable.

   a. **Consent/Deemed Consent.** If no party timely requests a hearing, assembles the original MONO as follows:

i. For any party who has returned a signed consent, replaces the original (blank) consent page for that party with the returned, signed page.

ii. Completes the certificate of service and response at the end of the assembled MONO, retains a copy for the file, and forwards the assembled document to the Office of the Administrative Law Judge (OALJ) for the signature of the Administrative Law Judge (ALJ). Upon receipt of the executed order in the region, proceeds to 12a(iii) below. (The OALJ will send copies as described in step 14c and, for an administrative order, abstract the order to the district court.)

iii. If the order being modified is an administrative order, enters the appropriate SEARCHS case note, modifies the existing order on SOD, sends an informational copy of the executed order to any parties to the request who are not parties to the action, and proceeds to enforcement; takes no further action in this section.

If the order being modified is a court order, enters a SEARCHS case note and sends informational copies as in the above paragraph. Notifies the paralegal that a filing in step 15 is required; monitors for receipt of the final court order and follows applicable procedures in step 17c at that time.

b. **Request for Hearing.** If any party timely requests a hearing, follows regular CSED procedures for identifying the issues, preparing for the hearing, and attending the hearing as a witness. (See step 13 for issues, conduct, and possible outcomes of the modification hearing.) If appropriate performs a "live" guidelines calculation during the telephone hearing concurrently with the calculation performed by the Administrative Law Judge.

Monitors for a proposed decision and order, any timely motion for review, and a final decision and order, under ARM 37.62.949 and 37.62.951. Enters the appropriate SEARCHS case note, and sends an informational copy of the final decision and order to any party to the request who is not a party to the action. Proceeds in step 12b(i) or 12b(ii) below as applicable.

i. If the final decision and order contains a **modification** of an existing
   - **administrative order**, modifies the existing order on SOD and proceeds to enforce.
   - **court order**, notifies the paralegal that a filing in step 15 is required; monitors for receipt of the final court order and follows applicable procedures in step 17c at that time.

ii. If the final decision and order finds that **no modification** is appropriate for an existing
   - **administrative order or Montana court order**, takes no further action in this section.

- **foreign court order**, proceeds immediately in step 17c(ii).

OALJ/ALJ

13. **Conducting Modification Hearing/Proposed Decision and Order.** Upon receipt of a timely request for hearing on the MONO, follows applicable procedures in section CS 401.3 for scheduling, vacating, and conducting the hearing; limits the hearing to the issues listed in the NOTE below, and questions the witnesses in a non-adversarial manner to elicit full disclosure of all pertinent facts in dispute.

    Following the close of the hearing, issues and sends to the caseworker and parties a proposed decision and order modifying the support obligation or finding that modification is not appropriate.

    NOTE: Issues at Modification Hearing. The following issues may be contested at a modification hearing:
    (1) The CSED's authority to act in this proceeding (open case; existing support order; request for review and possible modification, received from appropriate requestor or initiated by the CSED; subject matter jurisdiction; no other modifications pending or in progress).
    (2) The CSED's personal jurisdiction over the parties.
    (3) Service of the MONO.
    (4) Service of the Review Notice.
    (5) The monthly support amount.
    (6) Individual amounts in the guidelines worksheet, including income, deductions, supplemental expenses, adjustments to income, credit for payment of expenses, and days spent with each parent.
    (7) Medical support provisions.
    (8) Immediate income withholding (or exception).
    The hearing is further limited to resolution of contested facts identified by the parties or the CSED during the review sessions.

14. **Entering Final Decision and Order.** Proceeds in 14a or 14b as applicable, and step 14c.

    a. Upon receipt of a consent/deemed consent package prepared in step 12, reviews the package for correctness and obtains the signature of the ALJ on the (final) decision and order contained in the package.

    b. Following service of a proposed hearing decision and order in step 13, monitors for receipt of a motion for review within 20 days. If no motion is timely received, issues a final decision and order based on the proposed decision and order. If a motion is timely received, considers the motion and affirms, corrects, or amends the proposed decision and order, and issues a final decision and order.

NOTE: Judicial Review. If the existing support order is a court order, and the final decision and order in step 14b above finds that modification is appropriate, the opportunity for judicial appeal is automatically contained in the special court process described in steps 15 through 19. If the final decision and order finds that modification is not appropriate, or modifies an administrative order, judicial review is available on petition of a party as in other CSED contested case actions.

c. Upon entry of a final decision and order in step 14a or 14b, proceeds as follows:
   i. If the order being modified is an administrative order, sends regular copies to the caseworker and the parties.
   ii. If the order being modified is a court order, sends a certified copy to the caseworker and no copies to the parties.

COURT APPROVAL PROCESS

TERMINOLOGY NOTE: Beginning in step 15 the following definitions are used to distinguish between the CSED's administrative modification process and the court's completion of that process.

Proposed Decision and Order:
Order issued by ALJ following CSED modification hearing.

Final Decision and Order:
Order issued by ALJ after any motion to review the proposed decision and order has been resolved, or the time for entering the motion has passed.

Proposed Modification Order:
Modification order (from CSED's final decision and order) submitted to the district court for filing and judicial action: court may adopt, modify, reject, or remand.

Final Modification Order:
Modification order entered by the district court.

Paralegal

15. **Notice and Request to Court.** Upon receipt of the CSED's final decision and order in the regional office, proceeds in 15a through 15d.

    a. For the appropriate Montana district court, prepares and obtains the attorney's signature on form CS-408.3X, Notice of Proposed Modification and Request for Approval. The appropriate court is the court that entered the existing support order, or the court to which the CSED abstracted the existing support order in step 11c(i). The Notice includes a separate letter to the clerk of court that acts as a praecipe and also requires the attorney's signature. Completes the certificate of mailing in the Notice when the packages in 15c and 15d are being prepared.

IMPORTANT: This form and all other forms generated in this section to be filed with the district court require specialized, complex data elements. Elements needing special attention include headings (cause number, captions, name of court); order information (existing support order, foreign court order if applicable, final CSED decision and order); and names and addresses of non-SEARCHS parties and attorneys. Also, all filings must be on court-approved paper as required by 25-19-Rule 1, MCA; local practice rules of the particular district court also apply.

b. For each party prepares and signs form CS-408.3L, Letter Re: Filing of Proposed Modification, explaining the opportunity to file an objection to the proposed modification with the district court.

c. Assembles this package for each party:
   (1) Letter prepared in step 15b (original).
   (2) District Court Fee Information sheet (from regional office supply).
   (3) Final decision and order entered in step 14 (copy).
   (4) Notice prepared in step 15a, with the letter to the clerk of court (copy).

   Serves the package on each party and the party's attorney(s) by certified mail, personal service, or acknowledgment.

d. Sends the following package to the district court, by regular mail:
   (1) Notice prepared in step 15a, with the letter to the clerk of court (original, plus extra copy of Notice only); self-addressed stamped envelope for return of the conformed copy.
   (2) If applicable, existing support order issued by a foreign court (copy).
   (3) Final decision and order entered in step 14 (certified copy).

16. **Affidavit of Service.** Upon obtaining service of the package in 15d on all parties and attorneys, proceeds in steps 16a through 16c below. (If a non-SEARCHS attorney cannot be served at the attorney's last known address, proceeds in this step as soon as all other parties and attorneys have been served.)

    a. Prepares and sends to the district court by regular mail form CS-408.3Y, Affidavit of Service, informing the court of the dates of service of the proposed modification order on the parties and their attorneys. The Affidavit includes a separate letter to the clerk of court that acts as a praecipe and requires the signature of the CSED attorney.

    The package to the court should include the original Affidavit and letter to the clerk of court, plus an extra copy of the Affidavit only, with a self-addressed stamped envelope for return of the conformed copy. Sends copies of the Affidavit package to the parties and their attorneys.

b. Monitors for objection to the proposed modification within 20 days after service of the package in step 15d on each party; if a party objects, monitors for a hearing date, and proceeds to step 17.

c. If after 20 days from the last date of service the CSED has not received word of an objection, contacts the court and identifies the status of the proposed modification. If a hearing will be held, proceeds to step 17. If not, skips to step 18.

17. **Court Hearing on Proposed Modification.** Upon being notified that the court has set a date for a hearing on the proposed modification order, notifies and consults with the CSED staff attorney concerning the facts of the case.

a. Prepares testimony describing how the CSED
   - served notice as required by law via the RENO and MONO,
   - conducted the review sessions,
   - conducted the hearing or determined the consent or deemed consent of each party, and
   - determined the support amounts and other provisions contained in the proposed modification order.

   Assists the CSED staff attorney in the preparation and submission of any exhibits needed for the above testimony; if necessary, participates in the hearing as a witness.

   NOTE: CSED Representation at the Hearing. The CSED is a party to the court action but appears at the hearing only to provide information. Also, only the CSED staff attorney can represent or appear for the CSED at the court hearing. The caseworker or paralegal can appear only as a witness to give testimony as described above.

b. Upon receipt of a final order from the court, notifies the CSED staff attorney, enters the appropriate SEARCHS case note, and informs the caseworker of the outcome. In the case of a modification, sends to the clerk of court the Montana State Case Registry and Vital Statistics Reporting Form completed in step 8, with a letter or praecipe identifying the form as the statistical report required by MCA section 50-15-302, and giving the date of entry of the court's final modification order. Otherwise, takes no further action in this section.

   NOTE: Remanded Order. If the court remands the case to the CSED rather than modifying the existing order or finding that modification is not appropriate, the regional legal unit and the caseworker must work together to take action to satisfy the court. Specifically they must evaluate the reasons or guidance provided with the remand, identify the appropriate point at which to re-open the CSED's contested case, and take steps as outlined in this section to achieve the necessary administrative resolution and, if necessary, a final court order.

Caseworker

c. Upon being notified of a final court order received in step 17b or step 19, updates SOD as follows, and proceeds to enforce:

   i. If the final order modifies a foreign court order, modifies the data in the abstract order (amounts, terms, etc.), and removes the FOR MOD ONLY text. For the superseded foreign court order, does not modify the data or status, but changes the text to read, ORDER EFFECTIVE UNTIL [effective date of modification]/ SUPERSEDED ON EARLIER DATE FOR MOD ONLY, or the equivalent. (The text changes are necessary to explain the apparent gap between the two orders' effective periods.)

   ii. If the final order finds that modification of a foreign court order is not appropriate, does not change the SEARCHS status of the foreign court order or the abstract order, but changes the text to read as follows:
      - (Foreign court order) ACTIVE ORDER FOR ENFORCEMENT/ SUPERSEDED FOR MOD ONLY/MOD DENIED (or the equivalent).
      - (Abstract order) FOR MOD ONLY/MOD DENIED.

   (The end date of the foreign court order cannot be undone, but the text explains the true status. The abstract order must remain active for SOD purposes, because there must be at least one order on SOD with no end date; again, the text explains.)

   iii. If the final order modifies, or finds that modification is not appropriate for, a Montana court order, updates SOD (or not) according to regular procedures.

Paralegal

18. **Order Approving Modification.** If the court has received no timely objections and has scheduled no hearing on the proposed modification order, prepares form CS-408.3Z, Order Approving Modification. The Order includes a separate letter to the clerk of court that acts as a praecipe and requires the signature of the CSED attorney. The letter also requests that the court send two certified copies and a conformed copy of the signed order to the CSED, and a conformed copy to each party and attorney.

    After submitting the document for SEARCHS generation, but before printing, adds the date of the CSED's final decision and order to the appropriate sentence in part V of the form. This incorporates the terms and provisions of the CSED's proposed modification order by reference. *[In the future this data element will be entered during SEARCHS generation of the document, and the manual adjustment will not be necessary.]*

    In generating the form, pays special attention to the identity of the petitioner and respondent in the existing order, and their current roles on SEARCHS. If the case facts do not fit the standard format (for example, if the SEARCHS AP and CP are not named as petitioner and respondent (or respondent and petitioner) in the existing court order), adjusts the SEARCHS-generated document as necessary to correctly identify the obligations.

19. **Filing the Order Approving Modification.** Assembles the following package and sends to the court by regular mail:
    (1) Form CS-408.3Z, Order Approving Modification, including the letter to the clerk of court (original).
    (2) Final CSED decision and order entered in step 14 (copy), stapled to the original Order Approving Modification.
    (3) Montana State Case Registry and Vital Statistics Reporting Form completed in step 8.
    (4) Copies of items (1) and (2) for the CSED (three copies), the parties (one copy), and their attorneys (one copy), with stamped addressed envelopes for the same.

    Sends copies of the filing to the parties and their attorneys. Upon receipt of the final modification order from the court, notifies the CSED staff attorney, enters the appropriate SEARCHS case note, and informs the caseworker of the outcome (see step 17c for caseworker responsibilities).

Scenario	CP residence	AP residence	Support Order	Who Requests Review?	Who Can Review?
#1	MT	MT	Doesn't Matter	Doesn't Matter	MT
#2	Other State	MT	MT	Doesn't Matter	MT
#3	MT	Other State	MT	Doesn't Matter	MT
#4	Other State	MT	Third State	CP	MT
#5	Other State	MT	Third State	AP	Other State
#6	MT	Other State	Third State	CP	Other State
#7	MT	Other State	Third State	AP	MT
#8	Other State	MT	Other State	Doesn't Matter	Other State
#9	MT	Other State	Other State	Doesn't Matter	Other State
#10	Other State	Other State	MT	Doesn't Matter	MT

SUPERSEDES

CS 408.7, Registration of Support Order, July 1, 1997.

REFERENCES

MCA § 40-5-271(1)

POLICY

To modify a foreign support order the CSED must first register the order under MCA section 40-5-271(1). Registration for purposes of modification is an internal CSED function; it is available only during a review and modification proceeding, and does not confer jurisdiction for enforcement purposes.

The CSED provides notice of the registration, and an opportunity to contest the registration at hearing, to all parties in the review and modification proceeding. If a hearing is held, all actions in the modification proceeding are suspended until the registration is resolved.

For purposes of this section a "foreign order" is any order not issued by the CSED. In questionable cases the CSED legal unit should be consulted.

PROCEDURES

Caseworker

1. Upon determining that registration of a foreign order(s) is required for the review and modification process, prepares form CS-408.7A, Notice of Registration of Support Order for Modification. Signs and dates the notice; updates the SOD screen to show the order registered. Completes the certificate of mailing for the date of regular mail only. Makes the necessary number of copies for distribution in this step and step 2. Sends by regular mail
   - one copy of the notice to the issuing tribunal of each foreign order listed in the notice, and
   - the original notice and a certified copy of the registered order(s) to the CSED Office of the Administrative Law Judge (OALJ) for filing in the Support Order Registry.

   Retains one copy of the notice and registered order(s) for the case file.

2. Arranges for service of the notice on the parties by enclosing a copy with the Review Notice in the packages prepared in section CS 408.3. Upon service of the package on each party, enters a SEARCHS case note for the notice of registration served; proceeds with review and modification actions.

3. Upon being notified by the OALJ that a modification registration hearing has been granted, suspends all action in the review and modification proceeding until the registration issue is resolved; enters a SEARCHS case note.

Office of the Administrative Law Judge (OALJ)

4. Upon receiving a request for a registration hearing, determines whether the request is timely, and whether it includes one of the reasons for vacating stated in MCA § 40-5-271(2). A timely request is one received within 20 calendar days following the date of service on the requesting party.

   a. If so, immediately notifies the caseworker. Schedules a registration hearing, and prepares and sends a Notice and Order for Hearing staying any review and modification action in progress. Proceeds to step 7.

   b. If not, and the review and modification process has been completed, processes an Order Denying Hearing Request, obtains the ALJ's signature, and sends copies to the parties; retains the original in the file.

   c. If not, and the review and modification process has not been completed, informs the Administrative Law Judge (ALJ) of the request, and proceeds according to the outcome of step 5. If the request is granted, proceeds as in step 4a. If the request is denied, proceeds as in step 4b.

Administrative Law Judge (ALJ)

5. Upon being informed in step 4c of a registration hearing request that is untimely, or that does not contain a statutory basis for vacating the registration, identifies the status of the review and modification case. Requests additional pleadings or responses as needed from the parties, and makes a determination granting or denying the hearing request.

6. If the hearing is granted, conducts a registration hearing on the issues; these may include whether the original tribunal had subject matter or personal jurisdiction to issue the order, or whether the tribunal gave the party reasonable notice and opportunity to be heard. Issues a decision and order vacating or confirming the registration; enters a SEARCHS case note for a modification registration hearing decision and order.

OALJ

7. Obtains the ALJ's signature on the hearing decision and order. Sends copies to the parties and the caseworker. If the registration is vacated, removes the foreign support order from the Support Order Registry.

Caseworker

8. Upon receiving a registration hearing decision and order, proceeds as follows:

a. If the decision and order vacates the registration, takes formal action to terminate the review and modification proceeding under 408.3; updates the SOD screen to remove the registration.

b. If the decision and order confirms the registration, proceeds with the review and modification action at the point the action was suspended.

Retains the decision and order in the file for future reference. In subsequent enforcement proceedings, consults with the regional legal unit to consider the effect of the hearing decision, or the effect of any denial of, or failure to request, a registration hearing.

SUPERSEDES

CS 500.2, Registration of Support Orders for Enforcement Only, May 22, 1998.

REFERENCES

MCA 40-5-271(3)

POLICY

A "foreign" order registered under this section, is for the purposes of enforcement only and does not confer jurisdiction for any other purpose.

"FOREIGN" ORDER DEFINED--A foreign order is an order issued by a court or agency in another state. In questionable cases, a CSED staff attorney should be consulted.

CSED provides notice of the registration, and an opportunity to contest the registration at hearing. Once registered, the CSED may file an abstract of the order with the district court.

The following are requirements for registration:

1. The foreign order must be final. A child support order is "final" if it is not pending appeal, or the subject of a pending modification. Consult the regional CSED staff attorney if there is a question as to whether an order is "final" for purposes of registration.

2. The issuing court or agency must have had subject matter jurisdiction. The foreign state's law must authorize that court or agency to issue child support orders.

3. The issuing court or agency must have had personal jurisdiction over the parent owing support.

If an order is valid on its face, the law presumes that the issuing tribunal had full authority and jurisdiction to issue the order.

When the CSED registers an order for enforcement the CSED will notify the parties to the order of the registration. The notice informs the parties:

1. of the amount of any alleged arrearage as of the date of the notice;

2. that a party may request a hearing to vacate the registration or to assert defense to any alleged arrearage as stated, under reasons the administrative law judge may vacate registration.

3. that a hearing to contest the validity or enforcement of the order must be requested within 20 days after service of the notice; and

4. that failure to contest the validity or enforcement of the registered order in a timely

manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and will preclude further contest of the order with respect to any matter that could have been asserted at the hearing.

The administrative law judge may vacate registration of a foreign order if, at a hearing to enforce the order, the parent owing support presents evidence that:

1. the court or agency issuing the order did not have subject matter jurisdiction to enter the order or lacked personal jurisdiction over the contesting party;
2. the court or agency issuing the order did not give the party reasonable notice and opportunity to be heard before the order was entered;
3. the order was obtained by fraud;
4. the issuing court or agency has stayed enforcement of the order pending appeal;
5. the order has been vacated, suspended, or modified by a later order;
6. there is a defense under the law of this state to the remedy sought; or
7. the statute of limitations precludes enforcement of some or all of the arrearage.

Upon confirmation of the arrears by default or hearing, the arrears will be confirmed and considered adjudicated for enforcement and will become an automatic support lien. Writs of executions and other appropriate actions can be taken. **However, the arrears are not adjudicated for purposes of income withholding in the registration for enforcement process. A separate notice for income withholding must be issued for a past due support obligation.**

PROCEDURES

Caseworker

1. Upon determining registration of foreign order(s) is necessary to enforce a case, prepares form CS-500.2C, Notice of Registration of Support Order for Enforcement and debt computation worksheet. Signs and dates notice. Makes necessary number of copies for distribution in this step and step 2. Sends notice and attachments by regular mail.
    - original notice, certified debt computation worksheet and certified copy of registered order(s) to CSED Office of the Administrative Law Judge (OALJ) for filing in Support Order Registry.
    - one copy of notice, debt calculation worksheet and order(s) to non-custodial parent and custodial parent. When Montana is the responding jurisdiction in interstate cases send the custodial parent's copy to the initiating state.

- Retains one copy of notice, debt computation worksheet and registered order(s) for case file.
- Monitors for response of 23 calendar days following the date of mailing on the Certificate of Service on the notice.

2. On the 24th day after mailing, if an employer is known, issues an income withholding order for current support only. Proceed with other enforcement remedies. Modifies SOD by indicating registration for enforcement was accomplished and supersedes the order information on SOD.

3. Upon being notified by OALJ that an enforcement registration hearing has been granted, enters SEARCHS case note.

Office of the Administrative Law Judge (OALJ)

4. Upon receiving a request for registration hearing, determines whether request is timely. A timely request is one received within 23 calendar days after the notice is mailed.

    a. If so, immediately notifies caseworker. Schedules registration hearing, and prepares and sends Notice and Order for Hearing. Proceeds to step 7.
    b. If not, processes Order Denying Hearing Request, obtains ALJ's signature, and sends copies to parties; retains original in file.

Administrative Law Judge

5. If granted, conducts hearing on registration issues; these may include whether original tribunal had subject matter or personal jurisdiction to issue order; whether tribunal gave party reasonable notice and opportunity to be heard; whether the order was obtained by fraud, whether enforcement of the order has been stayed by the issuing tribunal pending appeal, whether the order has been vacated, suspended or modified by a later order, whether there is a defense under Montana law to the remedy sought and whether the statute of limitations precludes enforcement of some or all of the arrearage.

6. Issues hearing decision and order.

OALJ

7. Makes copies of decision and order and sends to parties and caseworker. If registration is vacated, removes foreign support order from Support Order Registry.

Caseworker

8. If decision and order vacates registration, consult with staff attorney to consider effect of hearing decision on enforcement proceedings; updates SOD screen to remove

registration. If decision and order confirms registration, if an employer is known, issues an income withholding order for current support. Proceeds with other appropriate enforcement actions and updates SOD as instructed in Step 2.

9. Upon receiving copy of decision and order from enforcement registration hearing, retains in file for future reference.

November 14, 2001 CS 500.3

FIDM BULLETIN

Warrants for Distraint When the Obligor Has Multiple Cases

The FIDM committee has been asked to respond to the following:

Question: When I issue a Warrant for Distraint on an obligor with multiple cases, the money usually goes to just one case because the bank levies on the first warrant and there isn't any money left for the other cases. What can I do to ensure that the money will be applied to all the obligor's qualifying cases?

Answer: You can combine multiple cases in one warrant so that the collection will be distributed according to the algorithm. In addition to resulting in a more equitable distribution of the money, combining cases has other benefits. It is less confusing to both the sheriff and financial institution and it decreases the cost of service.

PROCEDURE FOR COMBINING CASES

1. When issuing a Warrant for Distraint, enter each case number at the start of the "DATE RANGE" DFEs, then enter the date range.

2. Enter the total of all listed debts in the "AMOUNT OF WARRANT TOTAL" DFE.

For example, when the DFEs are completed like this:

05	*DATE RANGE*	*Case Number 55555*	*Jan 1991 thru Dec 1998*
06	*SUPPORT DUE*	*20,000.00*	
07	*DATE RANGE*	*Case Number 66666*	*Sept 1999 thru Oct 2000*
08	*SUPPORT DUE*	*3,000.00*	
15	*AMT OF WARRANT TOTAL*	*23,000.00*	

The warrant text looks like this:

	PERIOD	***SUPPORT DUE***
Case Number 55555	*Jan 1991 thru Dec 1998*	*$20,000.00*
Case Number 66666	*Sept 1999 thru Oct 2000*	*$ 3,000.00*
TOTAL AMOUNT OF WARRANT		*$23.000.00*

3. For each case you add to the warrant, add the case number, obligee and children to the documents on the Word Perfect side. (Headings on the docs in the warrant pac vary so be sure to review each one to determine where changes are needed.)

4. Place a hold on each account included in the warrant.

5. Enter a case note for each case you add to the warrant.

6. Monitor each case for collection and proper distribution.

SUPERSEDES

CS 500.3, Financial Institution Data Match (FIDM)/Administrative Enforcement in Interstate Cases (AEI), June 14, 2000.

REFERENCES

42 U.S.C. §666(a)(14) and (17); MCA 40-5-202(1) and 40-5-924

POLICY

Introduction. Federal law requires states to establish and maintain procedures for Financial Institution Data Match (FIDM) and Administrative Enforcement in Interstate Cases (AEI). These mechanisms increase the ability of states to take "quick enforcement" actions against an obligor's seizable assets. Specifically, FIDM provides an efficient, automated method of locating financial assets; AEI provides a special interstate process for obtaining a quick, one-time search of automated data bases and seizure of identified assets.

Scope of Procedures. This section contains CSED policies and procedures for identifying and seizing assets in Montana or other states through the FIDM/AEI framework. Procedures are limited to actions at the individual case level. System-driven batch-to-batch operations (interstate or intrastate) are carried out "off stage," with results identified and transmitted to the caseworker for individual case processing. (As of this writing Montana did not yet have the system capability to process mass requests to or from other states.)

Enforcement procedures are also limited to financial or cash assets that can be seized in a one-time enforcement action. Excluded from this group are non-cash assets (such as real property); assets that require special action (such as drivers' or other licenses); assets that are more suitable for ongoing enforcement (such as employment or periodic benefits); and assets currently available for lien but not levy (such as payments whose distribution is not yet determined).

FIDM Operations. The FIDM process is conducted at both the state and federal levels. Each IV-D agency is required to periodically compare child support obligors with account holders at all financial institutions in the state. Meanwhile, the federal Office of Child Support Enforcement (OCSE) regularly compares its data base of obligors submitted for federal offset with the data bases of participating "multi-state" financial institutions; OCSE then notifies each state of any matches found by including the information in the federal case registry transmission to the state.

The CSED tracks the number of cases in which FIDM information is used to initiate seizure actions; the number of FIDM seizures that result in collections; and the amount of those collections.

For purposes of this section the term "financial institution" means any bank, savings and loan association, credit union, security company, benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity in which a person can deposit money and maintain an account. Federal laws at Title 12, U.S. Code, Chapters 17 and 18 give a more precise technical definition.

AEI Operations. The AEI process is used for the limited purpose of locating and enforcing against assets located in another state. The process does not constitute an interstate referral, and the case is not considered to be transferred to the caseload of the state where the asset is located. Each state is required to keep records of the number of AEI requests received, the number of AEI requests for which support is collected, and the amount of AEI collected support.

It is important to distinguish between AEI cases and two-state UIFSA cases, as the two types of cases are mutually exclusive. For purposes of this distinction the states in an AEI case are referred to as the **requesting state** and the **assisting state**; the states in a two-state UIFSA case are referred to as the **initiating state** and the **responding state**. (Note that a third type of arrangement--direct enforcement--can occur in conjunction with or in the absence of a corresponding AEI or two-state UIFSA case. Direct enforcement can be accomplished by direct income withholding or interstate lien, and does not involve the IV-D agency of the state where the employer or asset is located.)

In an AEI case the requesting state must specify the type of operation required: seize-only or locate-and-seize. The case is closed as soon as the assisting state completes the requested operation(s). The AEI "seize" operation is also referred to as "quick enforcement."

Although the FIDM and AEI processes often go hand in hand, AEI enforcement targets are not limited to accounts held in financial institutions, but may include any cash assets that can be seized by the assisting state.

Montana Location. For purposes of enforcement under this section an asset is "located in Montana" if the asset payor or holder has a physical location in Montana for service of a seizure action. The physical location may be that of a main office, a branch office, or a registered agent listed with the Montana Secretary of State. (In most cases the Secretary of State himself/herself is not an agent for service of process on the asset payor or holder.)

Note that an entity that conducts business in Montana only over the Internet is not located in Montana for purposes of this section. Also note that where a financial institution claims to operate in Montana (or in "all states") according to multi-state FIDM information, the institution is located in Montana only if it maintains an office or agent in the state.

Due Process Requirements. According to federal law an AEI requesting state must comply with all procedural due process requirements applicable to the case before transmitting the case to the assisting state. When an asset is located the assisting state is then expected to take enforcement action consistent with its own due process standards.

Organization of PROCEDURES. The PROCEDURES and other information in the remainder of this section are divided into five parts:

Part I: Enforcing FIDM Information in CSED Cases
Part II: Outgoing AEI Requests: Enforcement
Part III: Outgoing AEI Requests: Locate with Enforcement
Part IV: Incoming AEI Requests
Part V: (Informational) Montana Requirements for Other States

PROCEDURES

I. ENFORCING FIDM INFORMATION IN CSED CASES

Regional Caseworker

1. Upon receiving information from an in-state or multi-state FIDM identifying an account for possible enforcement, performs the screening in steps 1a and 1b below:

   a. Determines whether the account holder is in fact the CSED obligor, based on the name, address, and date of birth listed for the account (the match was performed using the obligor's social security number submitted by the CSED). If all of these data elements match, or if any does not match but the account holder can be confirmed to be the obligor based on other information, proceeds to step 1b. Otherwise, enters a SEARCHS case note for failure to confirm the match and takes no further action.

   b. Determines whether the financial institution is located in Montana (see POLICY). If so, proceeds to step 2. If not, proceeds to step 3.

2. Identifies the appropriate target for service of the seizure action--this may be the branch where the money is located; the person specially designated by the financial institution for any FIDM-related processes; or the registered agent listed with the Montana Secretary of State. Proceeds with seizure of the account as in section CS 504.1, Writ of Execution, or section CS 507.3, Enforcing a Support Lien by Warrant for Distraint. Enters the appropriate event for issuance of the FIDM or MSFIDM writ or warrant.

   Upon collection, processes the collection in the usual way for the pay source; enters the appropriate event for the FIDM or MSFIDM collection received. (This event is used to count cases in which FIDM/MSFIDM information led to the collection of support; it should not be used to record cases with collections of $0.) If the CSED case is an outgoing interstate (two-state UIFSA) case, notifies the responding state of the collection using standard two-state procedures.

   NOTE: Refusal to Comply Based on Account Location. If the office or agent served with the seizure action in Montana refuses to obey the writ or warrant because the account is located in a different branch office, either in Montana or out of state, the caseworker should consult with the staff attorney to determine the best course of action. It may be more practical to accept the refusal and initiate a new seizure (in this step or in step 3) than to force compliance. Some multi-state financial institutions have notified states they will accept child support-related seizure actions only at certain identified offices.

3. Identifies the state where the obligor's account is located, using information provided by the multi-state FIDM.

    a. If the "account" state is also the responding state in a CSED outgoing interstate (two-state UIFSA) case, forwards the data from the multi-state FIDM to the responding state according to standard two-state procedures, and takes no further action in this section.

    b. If the "account" state is not a responding state in a CSED outgoing interstate (two-state UIFSA) case, proceeds to Part II, these PROCEDURES, to enforce against the out-of-state account.

    NOTE: Direct Enforcement Against Out-of-State Asset. Federal law does not prohibit the use of direct liens and levies across state lines. However, the CSED's specific ability to issue a Warrant for Distraint or obtain a Writ of Execution against an out-of-state asset is not clear. And, an interstate lien (for which the CSED **does** have authority) directs the financial institution only to freeze the funds, not to pay the amount of the lien; further, the lien is effective only if it is filed (perfected) according to the specific requirements of the state. Despite these restrictions, the CSED may occasionally receive a collection based solely on the interstate notification document (FED-LIEN) issued to the financial institution. If this occurs, the caseworker must **immediately** put a hold on the affected accounts and alert the region's legal unit. The legal unit can then determine the status and proper handling of the collection based on the case facts, the laws of the other state, and any other relevant information.

Procedures in Parts II through V below apply for all types of cash assets, not just accounts in financial institutions.

II. OUTGOING AEI REQUESTS: ENFORCEMENT

Regional Caseworker

1. Upon identifying a cash asset in another state belonging or payable to an obligor in a CSED case, determines whether the case meets all of the following criteria. If so, proceeds to step 2. If not, evaluates the case for other enforcement options, and takes no further action in this section.

(1) The asset is "located" sufficiently for execution (see NOTE below).

NOTE: Prerequisite Locate. In cases where the CSED has only partial information about an asset (for example, the obligor has a bank account in Bismarck, North Dakota), but further action is needed to identify the holder, the payor, or the exact location of the asset for purposes of actual seizure, an AEI seize-only request does not apply. The CSED must either submit an AEI locate-and-seize request (see Part III, these PROCEDURES) or, if necessary, hold the AEI request and investigate the asset further using manual methods.

(2) The total unpaid amount of the adjudicated debt in the case exceeds $500 or three months' support, whichever is less. In situations where the obligor owes a debt in more than one case, a separate AEI action is required for each case.

(3) The debt is not sufficiently enforceable through income withholding because EITHER
- there is no employer located for the obligor, OR
- withholding is in place but payments are not sufficient to retire the debt within two years, AND the caseworker determines that seizure of the asset would be beneficial to the overall enforcement of the debt.

(4) The cash amount of the asset is great enough--or may be great enough–to justify the time and resources required for quick-enforcement action under these PROCEDURES.

Note that a FIDM-reported account balance of "$0" does not necessarily mean a seizure will fail: the balance may increase by the time the seizure occurs, or the financial institution may have chosen not to report the actual balance for reasons of confidentiality.

Also note that the amount of the asset is not subject to the thresholds described in (2) and (5); these thresholds apply to the amount of the debt, not the amount of the asset.

(5) The case meets any thresholds or other conditions set by the state where the asset is located.

NOTE: Resources for Identifying States' Requirements. The federal Office of Child Support Enforcement (OCSE) maintains various on-line references identifying individual states' requirements for lien, levy, and interstate actions. At the time of this writing these sources included
- a "freeze and seize" matrix,
- a lien contacts matrix,
- the Interstate Referral Guide, and

- (in development) an AEI matrix.

Among them, these sources list arrears thresholds, enforcement conditions, information requirements, and applicable procedures for one-time asset enforcement in each state. They include information about both the state's IV-D operations and the state's requirements in actions received outside the IV-D environment. (For example, the freeze and seize matrix gives IV-D procedures for seizing assets, while the lien contacts matrix gives requirements for filing a direct lien from outside the state.) Internet addresses for these sources are available from the CSED Interstate Unit.

(6) The case is not appropriate for a two-state (UIFSA) interstate referral, or for a direct action against the asset by income withholding or interstate lien; or, there is some advantage to pursuing quick enforcement in lieu of these options.

NOTE: Interstate Liens in Conjunction with AEI. In some cases where a quick enforcement action is appropriate, the CSED may choose to file an interstate lien against the asset **in addition to** initiating an AEI action. Where applicable the purpose of combining the two enforcement methods would be to secure the asset while the assisting state takes any due process steps required to execute the AEI.

NOTE: Mandatory Action. For purposes of CSED internal audit, an AEI action will be required if

- the case qualifies for AEI action according to criteria (1) through (6) above, and
- there is no other method available for enforcing the case.

2. Initiates an AEI request as follows:

a. Prepares form CSE-AEI+ (UIFSA Transmittal #3), Request for Assistance, providing the following information:

(1) Certifications that

- the obligor and social security number are correctly identified;
- all Montana due process requirements have been met (to certify due process the CSED must have served and resolved a notice stating a sum-certain debt amount); and
- the amount of the arrears is correct.

(2) Case data elements including, at a minimum, the CSED case number; the CSED payment FIPS code; the name, address, social security number, date of birth, and any aliases of the obligor; any bank accounts or other cash assets in the state belonging or payable to the obligor (specify the type of asset, the name and address of the asset holder or payor, and the account number if applicable); a copy of the support order; the amount of the monthly support obligation; the date of the last payment; and the unpaid amount of all adjudicated arrears, fees, and fines. Other information, such as the name of

the obligee, may also be useful depending on the case facts.

(3) Any other information required by the assisting state according to available references.

b. Attaches any other documents required by the assisting state according to available references, makes a copy of the complete package for the case file, and transmits the request to the assisting state.

c. If the asset to be seized was identified by a multi-state FIDM, requests a manual payment instruction to identify any collections received from the assisting state. (An event for these collections will be entered in step 5).

NOTE: Compliance with Assisting State's Requirements Essential. Because the main purpose of AEI procedures is to enable states to execute on assets as quickly and efficiently as possible, it is crucial to the process to provide all necessary information and documents to the assisting state "up front." Any delays caused by incomplete information will lessen the chances of successful execution.

3. Monitors for action by the assisting state within a reasonable amount of time. (The assisting state is required to act "promptly.") If necessary, contacts the assisting state concerning the status of the AEI request.

4. If contacted by the obligor to contest a seizure action by the assisting state, proceeds as follows:

   a. If the obligor is contesting the assisting state's right to seize the asset (for example, the assisting state's authority or procedures in taking the action, the obligor's right to an exemption in that state, or the identity of the obligor), refers the obligor to the assisting state for appeal.

   b. If the obligor is contesting the debt amount, discusses the facts of the case and requests the obligor provide proof of payments, if applicable. If a mistake in the amount certified to the assisting state is discovered, and
      - the CSED has already received the collection, arranges for the appropriate refund.
      - the CSED has not yet received the collection, immediately alerts the assisting state by telephone or fax to the correction in the certified arrears; following the contact prepares and sends form CSE-IIUP, Status Update, confirming the correction.

   If the obligor is not satisfied with the outcome of the contact, advises him or her of the available remedies: (1) file a petition in the applicable Montana district court, or (2) seek relief from the assisting state (for issues other than the debt amount).

5. Upon receipt of a collection from the assisting state, processes the collection in the usual way for the pay source, and enters a case note for the AEI action completed with a collection. If the CSED's outgoing request was based on multi-state FIDM information, enters the appropriate event for the MSFIDM collection received.

   If the CSED case is an outgoing interstate (two-state UIFSA) case (the assisting state is not the responding state but a "third" state), notifies the responding state of the collection using standard two-state procedures.

6. Upon being informed by the assisting state that the seizure action did not produce a collection, enters a SEARCHS case note for the AEI action completed with no collection.

III. OUTGOING AEI REQUESTS: LOCATE WITH ENFORCEMENT

Regional Caseworker

1. Upon identifying a case where cash assets belonging or payable to the obligor in a CSED case **may** exist in another state, determines whether the case meets all of the criteria listed in (1) through (3), this step. If so, proceeds to step 2. If not, evaluates the case for other enforcement options, and takes no further action in this section.

   (1) There is reason to believe that cash assets belonging or payable to the obligor may exist in a **particular** state, based on
      - specific knowledge;
      - logical factors involving the obligor's geographic proximity to the state; or
      - logical factors concerning the obligor's known past or present associations with the state.

   (2) There is some advantage to pursuing asset location and seizure through AEI (limited to FIDM and other automated data bases) rather than through two-state (UIFSA) "full locate" or interstate referral to the other state.

   (3) If a cash asset were to be identified in the state, the case would meet the criteria for an AEI seizure action in Part II, these PROCEDURES, concerning
      - Montana thresholds and conditions ($500 or three months' support in unpaid adjudicated debt, not sufficiently enforceable through income withholding, separate AEI for each case), and
      - thresholds and conditions set by the other state.

   NOTE: Status for Internal Audit. For purposes of CSED internal audit, the AEI locate-and-seize option is one of the tools a caseworker may use to satisfy the requirement for locate action in a non-paying case, if there is reason to believe the obligor may have assets in the particular state.

2. Initiates an AEI action as in Part II of these PROCEDURES, specifying on form CSE-AEI+ that the request is for a locate-and-seize action.

3. Monitors for action by the assisting state as for a seize-only request in Part II of these PROCEDURES.

4. Upon being contacted by the obligor contesting a seizure action, or upon receiving a collection from the assisting state, proceeds as in Part II of these PROCEDURES.

5. Upon being informed by the assisting state of the outcome of the AEI locate-and-seize request, enters a SEARCHS case note for the results. For any locate or asset information received, updates the case on SEARCHS as applicable, and takes any further enforcement steps indicated by the new information.

IV. INCOMING AEI REQUESTS

Interstate/ Locate Unit

1. Upon receiving an AEI request from another state, determines whether the request meets conditions (1) and (2) below:

   (1) All required information is provided (see Part V, these PROCEDURES). If necessary, contacts the requesting state to obtain any missing information.

   (2) The debt exceeds $500 or three months' support, whichever is less. If the debt does not meet the threshold, informs the requesting state Montana will not accept the request, enters a SEARCHS case note, and takes no further action in this section.

2. Promptly opens the case on SEARCHS, using a special identifier to indicate an AEI case. Resolves the participants, enters the necessary information on the SOS and SOD screens, and sets up the appropriate SEARCHS accounts. For a locate-and-seize request proceeds to step 3; for a seize-only request, skips to step 5.

Locate Unit

3. Processes the locate portion of the request as follows:

   a. Arranges for the case to run against the CSED's automatic interfaces at the next opportunity (usually overnight). (If the obligor has been submitted for locate action previously, a SEARCHS entry is required to request the run.)

   b. Monitors for information from the automatic interfaces.

   c. Promptly prepares a response to the requesting state containing the following information:

(1) Any locate information received from the automatic interfaces; or, a statement the action produced no information.

(2) A statement Montana will keep the request open for the time required to complete a full cycle of quarterly FIDM runs, and will seize and forward any assets found or notify the requesting state of any negative results.

4. Monitors for the results of the FIDM run.

   a. If an account in a financial institution is identified, transfers the case to the appropriate Interstate caseworker.

   b. If the FIDM run does not identify any assets, promptly notifies the other state and closes the locate case.

Interstate Caseworker

5. Determines whether the asset is suitable for AEI seizure by the CSED (see NOTE below).

   a. If so, identifies the appropriate Montana office or agent for service of the seizure action, and proceeds to step 6, 7, or 8, as applicable. IMPORTANT: Seizure actions in steps 7 and 8 must be conducted within the same time frames as those used in Montana intrastate cases.

   b. If not, promptly informs the requesting state the asset is not available for seizure at this time, forwards information about any expected change in status, and closes the AEI case. (The determination the asset is not suitable for seizure should be documented in the course of case closure.) If a subsequent request is received, reopens the case and begins again at step 1, this Part.

NOTE: Suitable Assets Described. To be suitable for AEI seizure an asset must be (1) located in Montana (see POLICY), (2) available in the form of cash, (3) available within a reasonable amount of time, and (4) appropriate for one-time enforcement. Assets identified by Montana FIDM will meet all of these conditions. Assets identified directly by the requesting state must be evaluated more closely. Certain cash distributions or lump sum payments due the obligor--assuming the payor or holder is located in Montana--may or may not be available within a reasonable amount of time. (Examples include distributions from inheritances or lawsuits; lump sums for retirement or workers' compensation; or distributions from the (deceased) obligor's estate.) Also, assets payable periodically--such as wages, regular benefits, or installment payments--will generally require ongoing enforcement initiated by the requesting state, rather than AEI seizure.

6. If the asset is in the form of an expected future distribution (available within a reasonable amount of time), at the discretion of the caseworker initiates a support lien or creditor claim to secure the asset until the seizure can be executed; proceeds immediately to step 7 or 8 as applicable.

7. If the support order is a Montana order (CSED or district court), proceeds with seizure of the asset as in step 7a or 7b below.

   a. If the debt has not been adjudicated, or if a judicial proceeding is desirable for some other reason, proceeds as in section CS 504.1, Writ of Execution.

   b. If the debt has been adjudicated, proceeds as in section CS 507.3, Enforcing a Support Lien by Warrant for Distraint.

   (Note that for assets identified by the FIDM run in step 4, the SEARCHS event for issuance of a FIDM writ or warrant does not apply. The event applies only for FIDM/MSFIDM information received by the CSED and used to collect in a CSED case.)

8. If the support order is not a Montana order, chooses the best option from substeps 8a through 8c below, and proceeds as indicated.

   a. Registration. Registers the support order according to the procedures in section CS 500.2, Registration of Support Orders for Enforcement Only. (The CSED registration action will have the additional effect of adjudicating the debt listed in the notice of registration.)

      If a hearing is requested and granted, delays seizure action until the order from the hearing is issued; then,

      - if the order from the hearing confirms the registration, proceeds with seizure by warrant for distraint as in step 7b.

      - if the order from the hearing vacates the registration, informs the requesting state and proceeds as in step 5b; takes no further action in this section.

      If no hearing is requested and granted on the registration action, proceeds in step 7b as soon as the response period for the notice of registration ends.

   b. Uniform Enforcement of Foreign Judgments Act (MCA 25-9-501). Takes seizure action under this law as follows:

      i. Obtains an exemplified copy of the support order from the requesting state. (The exemplified copy is proof of the signature of the judge for the court that entered the order; it acts as a "supercertified" copy, allowing the CSED to pursue enforcement of the foreign judgment through a Montana district court.)

ii. Works with the Interstate Legal Unit to prepare and issue a package to the appropriate Montana district court containing
   - a motion to enforce the foreign judgment;
   - an affidavit signed by the appropriate Interstate staff member attesting to the validity of the foreign support order;
   - the original exemplified copy of the support order;
   - a debt computation from the requesting state, if available; and
   - the writ, application/affidavit, praecipes, notices, and other applicable documents and envelopes required for a writ action under section CS 504.1. NOTE: The praecipe to the clerk of court must include a request for a conformed copy of the filed motion. Other items in the writ package should be adapted as necessary to conform to the foreign judgment motion.

   Retains a copy of the complete package for the case file.

iii. Upon receipt of the conformed copy of the filed motion requested in step 8b(ii) above, works with the Interstate Legal Unit to prepare a notice to the obligor informing him or her of the action to enforce the foreign judgment, and containing a certificate of mailing.

   Attaches to the notice copies of (1) the CSED's motion to enforce the foreign judgment and (2) the CSED's affidavit concerning the foreign support order. Completes the certificate of mailing and sends the notice package to the obligor by certified mail, retaining a copy for the case file. Sends a copy of the notice to the court for filing.

iv. Monitors for action by the court under MCA 25-9-501, and for execution and return of service as described in section CS 504.1. The sheriff is required to hold the seized asset for 30 days before distribution.

v. If the obligor contacts the CSED contesting enforcement of the foreign judgment, explains any request for relief must be directed to the district court.

NOTE: Enforcement Timing. The advantage of moving to enforce the foreign judgment (vs. registering the foreign order in step 8a) is the ability to initiate the seizure without an administrative response period for adjudication of the debt. It is important, then, that the clerk of court understand the need for immediate action on both the motion and the writ, as any delay may cancel the effectiveness of the enforcement.

c. Joint Enforcement. Contacts the requesting state and, if agreed, coordinates the following concurrent actions:

(1) REQUESTING STATE--perfects an interstate lien on the asset in Montana. (Requirements for asserting interstate liens on Montana property are given in Part V.)

(2) MONTANA--proceeds with registration and seizure (step 8a).

The purpose of the interstate lien is to prevent withdrawal or receipt of the asset after Montana's notice of registration is issued. In this scenario it is assumed the requesting state can file the lien immediately, having already satisfied its own due process requirements.

9. Upon completion of a seizure action in step 7 or 8, closes all accounts, and closes the case on SEARCHS. Retains the hard-copy case file for future reference.

   Note that any collection will be forwarded to the requesting state via regular CSED payment processing; the caseworker will notify the requesting state of the results of the seizure action via form CSE-IRUP, in the course of regular case closure. SEARCHS records for the AEI request received and the associated collection action and amount will be retained on system for the closed case.

10. If after the case is closed another AEI request is received for the same case, reopens the case and begins again at step 1.

V. MONTANA REQUIREMENTS FOR OTHER STATES

Incoming AEI Requests. The following thresholds, conditions, information, and documents are required for AEI requests from other states. At the time of this writing most of the requirements were listed in OCSE publications accessible on line, or in information Montana has provided or will provide directly to other states.

Thresholds and Conditions
- Debt exceeding $500 or three months' support, whichever is less
- Asset conditions (for seize-only requests):
  - asset must be in the form of cash,
  - collectible by one-time enforcement (vs. ongoing), and
  - seizable immediately or within a reasonable time, with a date of availability provided; also,
  - holder must have an office, agent, or other physical location in Montana.

(For locate-and-seize requests Montana will pursue only accounts identified by FIDM interface; no other assets identified by automated interface will meet the above conditions.)

Information and Documents
- Separate request for each case with the same obligor
- Certification that the obligor and SSN are correctly identified

- Certification that all due process requirements of the requesting state have been met
- Certification that the amount of the arrears is correct
- Debt computation worksheet
- Case number in the requesting state
- Obligor's name
- Obligor's address
- Obligor's social security number
- Obligor's date of birth,
- Obligor's aliases, if any
- Names of obligee and children
- Certified copy of the support order
- Amount of the monthly support obligation
- Date of the last payment
- Amount of the certified arrears
- Payment address and FIPS code
- [for seize-only requests] Asset specifications (type, location, amount, payor or holder)
- [for cases with non-Montana support orders, upon CSED request] Exemplified copy of the support order

Direct One-Time Enforcement Actions. The following information is provided as a reference for CSED staff. The CSED does not participate in direct interstate liens or seizures initiated by other states against Montana assets.

Incoming Interstate Liens Against Cash Assets--Requirements

- Uniform Commercial Code lien filing
  - > Filing agency: Montana Secretary of State
  - > Filing fee: $7
- Notice of lien filing to asset payor or holder (recommended)

(Requirements for liens against other assets--real property, motor vehicles, other non-cash personal property--do not apply to this section.)

Incoming Interstate Seizures--Requirements

- Writ of execution issued by a Montana district court
  - > the underlying judgment must be registered in Montana
  - > the application for the writ must be made by an attorney licensed to practice in Montana
- Personal service of the writ on the property holder by a levying officer; fees charged by levying officer
- Notice of exemptions to the property holder
- Notice of seizure to the obligor
- Warrant of execution issued by the district court (if the levying officer determines an expectation of privacy applies)
- Filing of original writ and levying officer's return of service with the district court

SUPERSEDES

CS 501.3, "Payments Received in Field Offices," April 15, 1998

PURPOSE

This section contains procedures for handling and safeguarding collections received in the field office.

POLICY

General Rule. When the field office receives payments, either delivered or mailed, the obligor is notified to send all future payments directly to the Department of Public Health and Human Services, Child Support Enforcement Division, P.O. Box 5955, Helena, MT 59604.

Internal Control. The following instructions are designed to accomplish effective internal control in each field office:

Receipting--Two employees sign each receipt for coin or currency. EXCEPTION: When two employees are not available, payor and receipting employee sign.

Depositing--Generally speaking, the employee receipting should not be the same one who makes the deposit.

Frequency of Deposits. All monies received are deposited with a depository approved by the State Treasurer's Office each day regardless of the amount of money (MOM Volume II, 2-1210.20).

PROCEDURES

PROVIDING RECEIPT TO PAYOR

Field Office Employee

1. Prepare, in triplicate, receipt form CS-245 or its equivalent.

2. Distribution:
    - Original to payor
    - Copy 1 to TAPP
    - Copy 2 retained by field office

PROCESSING CHECKS

1. Complete receipt and attach TAPP copy to check.

2. Forward all checks to DPHHS/CSED/TAPP P.O. Box 5955 on a daily basis.

MAKING DIRECT DEPOSITS

1. Complete bank deposit slip daily in triplicate identifying payor by name for each transaction.

2. Distribution:
    - Original--to bank with deposit
    - Yellow--to TAPP with receipt attached
    - Pink--retained in deposit book with bank deposit receipt attached

PROVIDING A SAFEKEEPING FACILITY FOR COLLECTIONS

1. At all times, and immediately after receipt of monies, store collections in a locked box appropriately secured until deposit that day (MOM Volume II, 2-1210.50).

2. Maintain a record of office personnel having knowledge or possession of keys to the device in which collections are stored (MOM Volume II, 2-1210.50).

SUPERSEDES

CS 503.4, Redirecting Support Payments, May 5, 1998.

REFERENCE

MCA 40-5-205, 40-5-412, and 40-5-909(2) through (5); OCSE Policy Interpretation Question 01-01, February 2, 2001.

POLICY

The purpose of a request to redirect support payments is to ensure that the CSED has a complete and accurate record of all support paid by an obligor, by requiring support to be paid through the CSED. When appropriate conditions apply a request to redirect support payments to the CSED may be sent to the obligor, the Montana Clerk of Court, or both.

A request to a Montana Clerk of Court is appropriate when the existing support order directs the obligor to pay support through the Montana Clerk of Court's office. The CSED must "release" (withdraw) this request when the case is closed.

A request to an obligor is appropriate when either

- the existing support order was issued in Montana, or
- the existing support order names the obligee as the payee, or does not name a specific payee (person or entity).

If neither condition applies, the CSED cannot order the obligor to redirect support payments; instead, the obligor must continue to send payments to the payee named in the order.

The request to the obligor is included in the version of the case opening letter that went into effect February 2002; case opening letters prior to that time included the request only in cases where the obligor was living in Montana.

PROCEDURES

Caseworker

1. For all cases in which the CSED is enforcing a support obligation or payment of a support debt, determines whether a request to redirect payments is appropriate (see POLICY).

   a. In cases where a request to a Montana Clerk of Court is appropriate, completes form CS-503.4B, "Notice of Statutory Interest," and mails the notice to the Clerk of Court, retaining a copy in the case record. Proceeds to step 3.

   b. [Cases opened before February 2002 only] In cases where a request to the obligor is appropriate, and the request was not contained in the case opening letter, completes form CS-503.4A, "Notification to Obligor," and mails the form to the obligor by regular mail, retaining a copy in the case record.

NOTE: In cases where the support order was issued by a Montana district court, and the pre-February 2002 case opening letter to the obligor did not contain a request to redirect payments to the CSED, actions in both 1a and 1b may apply.

2. Monitors for payment. Enforces the support obligation through appropriate means, including income withholding as applicable (see sections at CS 510). In cases where the obligor has not been ordered to send payments to the CSED, and a notification in step 1b is not appropriate, sends an interstate referral to the state that issued the support order, requesting enforcement.

   EXAMPLE: The case is opened upon application or public assistance referral. Both the obligor and the obligee live in Montana; the obligor's Montana employer is known. The existing support order was issued by the state of Washington, and orders the obligor to make support payments to a Washington court. The CSED sends an interstate referral to Washington. Washington initiates direct income withholding with the Montana employer, and sends payments received from the employer to the CSED.

   If the issuing state is unwilling to take enforcement action (because, for example, neither of the participants resides in the state or has applied to the state for services), consults the regional legal staff concerning the best course of action. Depending on the facts of the case, options may include (1) suggesting to the obligee (or obligor) that he or she apply directly to the state that issued the order, (2) proceeding with CSED income withholding after documenting the other state's response, or (3) other remedies that may be appropriate in the case.

   NOTE: Modification Not Available to Change Payee. The need to change the payee named in a support order is not, in and of itself, a "significant change of circumstances" for purposes of a modification action. However, if the order is eligible for review and modification under criteria described in section CS 408.3, the modified order will redirect all support payments to the CSED.

3. In cases where a Notice of Statutory Interest was sent in step 1a, immediately upon case closure completes and mails to the Clerk of Court form CS-219, Notice of Release of Statutory Interest. If applicable, selects the option for payment to the CSED of assigned arrears.

REFERENCE

Section 40-5-226, MCA

SUPERSEDES

CS 503.5, Administrative Civil Contempt, January 6, 1995.

POLICY

Contempt is a willful disregard or disobedience of a public authority. The events constituting administrative civil contempt, as provided by section 40-5-226(13), MCA, are:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearing officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearing officer fails to comply with discovery requests; or

(e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time income is required to be withheld and paid to the department and the payor fails to take the required action.

PROCEDURES

Caseworker

1. Upon a determination that at least one of the contempt criteria listed above is met, proceeds as follows:

   a. If the alleged contemnor is a payor under an order to withhold, proceeds to step 2.
   b. If the alleged contemnor is not a payor under an order to withhold, proceeds to step 3.

2. Before pursuing contempt charges against a payor, takes action in step 2a and, if necessary, step 2b.

   a. Attempts to resolve the matter by informal (telephone) contact with the payor. The contact or series of contacts should explain the requirements of the withholding order; confirm the facts of the case and identify the specific payment delinquency; attempt to persuade the payor to cure the delinquency and to begin withholding income and making payments as ordered; and alert the payor to the consequences of continued noncompliance. If applicable, alerts the CSED Employer Relations Specialist (ERS) to the problem, requesting assistance or intervention as needed.

Thoroughly documents all contacts and attempted contacts with the payor; documentation should include the date, form, content, and results of each contact. Especially important are any facts demonstrating that the payor knowingly chose to ignore the order to withhold or the CSED's attempts to discuss the situation.

b. If the contacts in step 2a fail to produce the required payments, prepares and sends to the payor by certified mail, return receipt requested (using "restricted delivery" option if useful in obtaining service on the proper person at the address), form CS-503.5C, Employer Contempt Letter, with a copy to the ERS. Monitors for response within 20 calendar days (or a longer period if appropriate to the case).

NOTE: Addressee for Letter. The letter in this step should be addressed to and served on a person who, in his or her capacity with the payor, has the authority to correct the noncompliance or to initiate a correction. This may be a higher-level person than the person contacted in step 2a. Also, the addressee should be someone who can receive fair warning on behalf of the payor, and who may share in the responsibility for paying any penalties. In questionable cases the caseworker should consult the CSED staff attorney to determine the most appropriate addressee.

i. If the payor timely responds and pays or arranges to pay the full amount of the delinquency, monitors for continued compliance. If another delinquency occurs, takes action in step 2a if appropriate, and repeats step 2b. (The Employer Contempt Letter is mandatory before proceeding to step 3.)

ii. If the payor does not timely respond, or timely responds but does not make satisfactory arrangements to pay the delinquency, enters a SEARCHS case note documenting the failure, and proceeds to step 3.

3. Prepares form CS-503.5A, "Application and Affidavit for Order to Show Cause," according to the following directions (the form is available, with “callout” numbers included, on the regional office’s shared directory):

> **Call-outs 1-6 and 55-57 on the form should be completed in all cases.** Please note that the caption should be modified as necessary to fit each individual case.

> **The other call-outs (7-54) should be retained, revised, or deleted as appropriate to the case.** These are general guidelines for documenting the different types of contempt, and are grouped as follows:

7-17 Disobedience of order

18-30 Failure to appear at hearing or for genetic testing, after subpoena issued

31-40 Failure to produce evidence at hearing, after subpoena duces tecum issued

41-43 Failure to comply with discovery requests

44-54 Failure of payor to comply with order to withhold income

NOTE: When this type of contempt applies, the language should include a specific reference to the letter sent in step 2b.

> **More than one act of contempt can be alleged on the same form.** Include facts about each separate allegation of contempt. Also, if you have additional supporting evidence or information, include it.

> **Be sure to delete text containing call-outs that do not apply to your case.**

> **Finally, review the form to make sure it makes sense.** The large amount of customizing required for each individual case may inadvertently result in conflicting statements or gaps in information in the final text.

4. Numbers and attaches all exhibits to the original application and affidavit, and makes a copy of the exhibits and the form for the case file.

5. Prepares a proposed form CS-503.5B, "Contempt Citation and Order to Show Cause," according to the following directions, and makes a copy for the case file (the form is available, with "callout" numbers included, on the regional office's shared directory):

> Modify the caption as necessary to fit each individual case.

> If the alleged contemnor is the obligor's payor, enter the name of the **entity** (business or organization) at call-out 5.

> Complete the name and address portion on the Certificate of Mailing (call-out 11 on the form).

If the alleged contemnor is the obligor's payor, (1) enter the name of the **person** upon whom the citation and order will be served, with the person's relationship to the entity, and the service address (for example, Jane Smith, Director, ABC Corporation, 123 Main Street), and (2) include the CSED Employer Relations Specialist in the certificate of mailing.

NOTE: In questionable cases consult the CSED staff attorney to identify a person authorized to receive or accept service on behalf of the payor. The person is generally an officer, director, manager, registered agent, or other person of similar responsibility. See MCA § 25-20-Rule 4D for an exhaustive list.

> If you choose to serve the alleged contemnor by sheriff or civil process server instead of by mail, revise the language of the certificate of mailing to delete any reference to the alleged contemnor.

6. Mails the original "Application and Affidavit for Order to Show Cause" together with the original, proposed "Contempt Citation and Order to Show Cause" to the OALJ. At the same time, advises the OALJ of the caseworker's telephone number for the hearing, and of any dates the caseworker is not available during the time the hearing will be scheduled (see step 9). Enters the associated SEARCHS case note, and monitors for response from the OALJ within 20 days.

Hearings Assistant

7. Upon receipt of the documents, opens a case file and enters the associated SEARCHS case note. Then forwards the case file to the Administrative Law Judge (ALJ) for review and determination.

Administrative Law Judge (ALJ)

8. Reviews the file. If sufficient cause exists, grants the application; issues the proposed Contempt Citation and Order to Show Cause by signing the same and returning it to the Hearings Assistant for further processing. If sufficient cause does not exist, writes "denied" across the face of the proposed citation and order, and returns the package to the Hearings Assistant for further processing.

Hearings Assistant

9. If the order was issued, schedules the hearing (at least 45 days in the future) and enters the appropriate SEARCHS case note. Attaches a copy of the instructions explaining a telephone hearing to the back of the order. Makes a file copy and returns the original issued Contempt Citation and Order to Show Cause to the caseworker.

   If the order was denied, makes a file copy of the proposed citation and order, enters the appropriate case note, and returns the original to the caseworker.

Caseworker

10. Upon receiving a Contempt Citation and Order to Show Cause signed by the ALJ, completes, signs, and dates the certificate of mailing at the end of the document. Makes the appropriate number of copies and mails them as indicated in the certificate of mailing; enters the associated SEARCHS case note. Retains the original in the case file. Makes sure a copy of the Application and Affidavit for Order to Show Cause, and a copy of each exhibit, is attached to all copies of the order before mailing.

NOTE: Service Options. If the alleged contemnor is served by mail, it must be certified mail. If the alleged contemnor is not served by mail, service must be accomplished in person by a sheriff or other civil process server. In this situation the certificate of mailing does not include the alleged contemnor. Rather, the CSED prepares form CS-401.3C, Sheriff's Praecipe, and forwards the original praecipe together with the original and one copy of the citation and order to the sheriff/civil process server, retaining a copy of the complete package in the case file.

11. Monitors for proof of service of the citation and order. When proof of service upon the alleged contemnor is received, enters the associated SEARCHS case note, forwards a copy of the proof of service to the OALJ, and retains the original proof of service in the case file. Prepares the CSED case and participates in the contempt hearing.

Employer Relations Specialist (ERS)

12. Upon being notified of an alleged act of contempt concerning the obligor's payor, researches the allegation, prepares any relevant information, and coordinates activities and results with the caseworker. If advisable, proceeds in 12a or 12b below with respect to the hearing.
    a. **Hearing observer.** Advises the OALJ the ERS will be attending the hearing as an observer only. Provides a telephone number; attends the hearing.
    b. **Hearing witness (requested by the caseworker).** Ensures the ERS is included on the witness and exhibits list prepared by the caseworker. Testifies at the hearing.

ALJ

13. Conducts the hearing and enters the associated SEARCHS case note. Issues a decision and order ruling on the alleged contempt. Delivers the decision and order to the Hearings Assistant.

    In the case of a payor found to be in contempt, includes in the decision and order a provision that the payor may purge the contempt and the associated penalty by making the required payment by a future date certain.

Hearings Assistant

14. Mails copies of the decision and order to all parties and, if the case involves a payor, the Employer Relations Specialist; files the original in the hearing file; enters the associated SEARCHS case note.

Caseworker

15. Upon receipt of the hearing decision and order from the OALJ, reviews the determination and takes appropriate action in 15a, 15b, or 15c below.

    a. If the hearing decision and order finds the obligor's payor in contempt, monitors for action by the payor.

        i. If the payor makes the required payment by the date specified in the decision and order, sends a letter to the payor confirming the contempt has been purged, with a copy to the ERS; enters a SEARCHS case note, and proceeds to monitor for continued compliance.

        IMPORTANT: Once the payor purges the contempt, any subsequent failure to comply with the income withholding order constitutes a new act of contempt. To proceed against the payor based on the new contempt the CSED must begin again at step 2.

        ii. If the payor does not make the required payment by the date specified in the decision and order, informs the ERS and proceeds as follows:

            A. Contacts the payor and
                - informs the payor it is not abiding by the terms of the decision and order;
                - explains that if the problem is not corrected immediately the CSED may be forced to pursue additional action against the payor; and
                - documents the contact.

            B. If the payor complies, proceeds as in step 15a(i) above.

            C. If the payor does not comply, consults with the CSED staff attorney to determine whether to proceed with further action against the payor. Further action may include penalty collection (by warrant for distraint), other "indirect" actions to enforce withholding (such as administrative license suspension), or action in district court.

            NOTE: Enforcement of Penalties. In cases of payor contempt, the CSED's primary goal is to obtain compliance with income withholding requirements, not to collect penalties. However, in extreme situations the CSED will take penalty collection action in step 15a(ii)(C) above to compel pending and future compliance. In determining whether penalty collection is appropriate in a particular case the caseworker and the CSED attorney must consider (1) whether other, non-punitive methods for obtaining compliance have been exhausted, (2) whether the collection action is likely to have a persuasive effect, and (3) if so, whether this effect will be beneficial to the overall enforcement of the income withholding case.

b. If the alleged contemnor is not the obligor's payor, and the hearing decision and order finds the alleged contemnor in contempt, consults with the CSED staff attorney regarding available enforcement or penalty collection options.

c. If the hearing decision and order does not find the alleged contemnor in contempt, proceeds to monitor or enforce the case according to the terms of the order.

ERS

16. As necessary or upon request, assists the caseworker with actions in step 15 to determine or secure the compliance of the payor.

Caseworker

17. If contacted by the obligor at any time concerning the status of the obligor's support obligation when the payor fails to timely withhold or pay income, explains that

- the failure does not relieve the obligor of the obligation to pay support, and
- arrears will accrue for each month the CSED does not receive payment of the obligor's ordered amount.

If the obligor claims the payor has withheld income from the obligor but not paid it to the CSED, further informs the obligor of his or her right to initiate a separate civil action against the payor to recover the amount. The applicable statute, section 40-5-909(8)(c), MCA, is given below.

"The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department."

SUPERSEDES

[new section]

REFERENCES

42 USC §666(a)(15); MCA §40-5-275.

POLICY

Seek-Work as a CSED Enforcement Tool. Montana law allows the CSED to enforce a support order by requiring the obligor to seek employment and report on the progress of that activity. If the obligor does not comply, the CSED can enforce the seek-work order through a contempt action. It is the policy of the CSED to limit the use of this enforcement tool to cases where the obligor has an incentive to comply, and where other enforcement methods have been or are likely to be unsatisfactory. Caseworkers should carefully weigh the administrative costs against the likely outcomes before initiating action under this section.

Conditions for Initiating Seek-Work Action. The following conditions are required for initiating action in this section:

(1) The obligor owes a support debt.

(2) The obligor is underemployed, and is not engaged in diligent efforts to seek suitable employment.

NOTE: "Underemployed" and "Suitable Employment" Defined. For purposes of this section "underemployed" means not engaged in suitable employment; "suitable employment" means employment commensurate with the obligor's qualifications and the availability of employment opportunities in the community, or in the absence of commensurate employment available within a reasonable distance from the obligor's address, "suitable employment" means any employment that the obligor is capable of performing.

(3) An enforcement action is pending (for example, income withholding, medical enforcement, license suspension, contempt action) and a hearing on the notice has been requested.

(4) The obligor has the capacity to seek employment and to engage in work if employment is offered. For purposes of this section an obligor is incapacitated--and not subject to a CSED seek-work action--when he or she is receiving benefits reflecting **total** physical or mental disability (for example, certain workers' compensation, railroad, veterans' or social security benefits), or can show other proof of **total** disability. Incapacity may be due to illness, injury, or some other condition, and may be permanent or temporary.

(5) There is a reasonable expectation of compliance with the seek-work order, and the CSED has a practical means of monitoring that compliance; also, the CSED expects to

pursue further action in case of noncompliance.

(6) There is sufficient evidence to prove the points in conditions (2) and (4) above. Evidence supporting these points may include
  - proof of previous employment with descriptions of duties,
  - testimony of witnesses having direct knowledge of the obligor's current, or relevant past, capacity or ability,
  - proof of educational or training qualifications,
  - public records of jobs available in the obligor's community or within a reasonable distance of the obligor's address (lists obtained from a local Job Service office, for example)
  - any other information showing the obligor is now able to seek and engage in employment (for example, medical records relating to ability to work; membership records showing participation in relevant activities).

PROCEDURES

Caseworker

1. In a case in which an enforcement hearing is requested and granted, determines whether an order to seek employment may be appropriate (see POLICY). If so, proceeds to step 2. If not, takes no further action under this section.

2. Prior to the enforcement hearing, prepares an oral motion for an order to seek employment; proposes in the motion that the obligor be directed to take the following actions:

   (1) Seek suitable employment within a specified amount of time (to be determined by the Administrative Law Judge at the hearing), where "suitable employment" means employment commensurate with the obligor's qualifications and the availability of employment opportunities in the community, or in the absence of commensurate employment available within a reasonable distance from the obligor's address, "suitable employment" means any employment that the obligor is capable of performing.

   (2) File a weekly report with the CSED showing at least five new attempts by the obligor to find employment.

   (3) Include in the weekly report the name, address, and telephone number of each employer with whom the obligor sought employment, and the name of each individual the obligor contacted to inquire about or apply for employment.

   (4) Within 3 working days after obtaining employment, notify the CSED of the name, address, and telephone number of the employer, and of the name of an individual the CSED may contact to verify employment.

(5) In cases where income withholding or a similar plan for payment of the support debt has **not been ordered**, or a payment plan has been ordered but the payments are **not sufficient** to reduce the debt: Make payments on the past-due amount at the rate of 1/24th of the debt amount per month, in addition to any payment due for current support; the amount for debt payment may be less than 1/24th if it is determined according to the guidelines for hardship adjustments to income withholding (section CS 510.5) or for license suspension payment plans (section CS 530.2).

Also includes in the oral motion

- a statement that the obligor has claimed inability to pay support because of unemployment or underemployment,
- for any option identified in step 3, a statement proposing a specific alternative to the seek-work requirement, reverting to the seek-work requirement if the obligor fails to comply with the alternative, and
- a statement proposing that the seek-work provisions of the order be effective for 6 months or until the obligor finds work, whichever occurs first, and proposing an effective period for any alternative requirement.

3. In preparation for the enforcement hearing, takes additional steps as follows:

a. Determines whether, in connection with the enforcement notice now pending, the obligor has claimed inability to pay support because of unemployment or underemployment. Evidence of this claim may be
   - an overt statement by the obligor,
   - an indirect statement by the obligor clearly implying the claim, or
   - failure of the obligor to object to the claim when suggested by another person.

b. Determines whether other steps by the obligor, if ordered by the CSED, would be acceptable in lieu of an order to seek employment. For example, it may be desirable for the obligor to pursue training or education to improve his or her job qualifications, or to receive general training in finding and securing a job.

If an acceptable alternative to seek-work action is identified in the case, determines whether
   - there is a reasonable probability the obligor would comply with the alternative if ordered, and
   - the required activity could be monitored by the CSED with little difficulty.

If so, defines any necessary details and includes the alternative in the motion prepared in step 2. If not, takes no further action with respect to the alternative.

c. Determines whether discovery on the seek-work issue will be necessary; if so, prepares an oral motion for discovery of the information needed to prove the points in step 7.

4. Attends the enforcement hearing.
    a. If no claim of inability to pay based on employment status exists at the time of the hearing, and the obligor makes no claim at the hearing, asks a direct question to determine whether the obligor is or is not making this claim. If the obligor makes the claim, proceeds to step 4b. If not, proceeds with the enforcement hearing but takes no further action with respect to an order to seek employment.
    b. If before or during the hearing the obligor claims inability to pay based on employment status, as described in step 3a, orally presents the motion prepared in step 2, and any motion for discovery prepared in step 3c.

OALJ

5. Conducts the enforcement hearing according to the procedures for the specific enforcement remedy. Upon a motion by the caseworker for an order imposing a payment plan and requiring seek-work or alternative activity, takes action in step 5a, 5b, or 5c, and 5d, as appropriate.

    a. If the obligor is agreeable to the payment plan and the seek-work or alternative requirements, and waives the right to a hearing on these issues, enters an oral order as proposed in the motion or as agreed during the enforcement hearing.

    b. If the obligor objects to the payment plan or to the seek-work or alternative requirements, enters an oral "show cause" order setting a date and time for a seek-work hearing on the issues in the motion (taking into account the time needed for discovery, if applicable), directing the obligor to appear and show cause why the payment plan and seek-work or alternative requirements should not be imposed, and ordering discovery if applicable.

    c. If the information presented at the enforcement hearing clearly disproves the basis for the motion, orally denies the motion.

    d. Follows the oral order entered in 5a, 5b, or 5c above with a written notice and order for a seek-work hearing; includes exhibit due dates; sends the notice and order to the seek-work hearing participants.

Caseworker

6. If a discovery order is not honored, consults with the CSED staff attorney about appropriate methods of enforcement.

7. Prepares for and attends the show-cause hearing on the seek-work issue. Points to be proved at the hearing include
    (1) The obligor is not currently engaged in diligent, bona fide efforts to seek suitable employment.
    (2) The obligor has the capacity and ability to seek employment and to engage in work if employment is offered.

(3) Suitable employment is available within a reasonable distance from the obligor's address.
(4) If applicable, the obligor is not currently participating in a payment plan sufficient to reduce the support debt.
(5) If applicable, the obligor is capable of participating in training or education to improve his or her earning capacity.

(See POLICY for types of evidence that may be used to prove the above points.)

OALJ

8. Conducts the show-cause hearing on the payment plan and seek-work issues; enters a decision and order, and informs the participants.

Caseworker

9. Upon entry of an order imposing a payment plan and seek-work or alternative requirements, sets ticklers to periodically monitor for compliance by the obligor during the effective period of the order.

   a. If the obligor fails to comply with the seek-work requirements, consults with the CSED staff attorney and takes action under
      - judicial civil contempt (MCA Title 40 Chapter 5 Part 6),
      - administrative civil contempt (MCA section 40-5-226(12)), or
      - criminal nonsupport (MCA section 45-5-621).

   b. If the obligor fails to comply with the payment plan, consults with the CSED staff attorney and takes action under MCA section 40-5-226(12) for administrative civil contempt.

   c. If the obligor fails to comply with any alternative requirements, consults with the CSED staff attorney to activate and implement the seek-work order; takes action in step 9a to enforce the seek-work order if necessary.

10. If the obligor complies with the order issued in step 8 but does not obtain employment within 6 months after entry of the order, monitors the case for the next enforcement proceeding, and determines at that time whether new seek-work action is appropriate.

SUPERSEDES

Section CS 504.1, "Writ of Execution," September 8, 1999.

REFERENCES

Title 25, Chapter 13, MCA; Title 25, Chapter 19, Rule 1, MCA; ARM 46.30.507

POLICY

Applicability. This section contains procedures for enforcing a support judgment by seizing property due, owing, or belonging to the obligor. **Where the property is state lottery winnings, special procedures in section CS 507.5, Lottery Liens, apply; do not proceed with a writ of execution in this section until all applicable requirements in section 507.5 have been met.**

Operation of Writ of Execution. A writ of execution is an order issued by a court directing a levying officer to seize and sell certain specified property and to deliver the proceeds to a named recipient. In CSED cases the issuing court is the district court where the underlying support order is filed; the levying officer is usually the sheriff of the county where the property is located; the property is owned by the obligor in the case; and the recipient of the net proceeds from the sale of the property is the CSED.

The district court must have a basis upon which to order execution by writ. In CSED cases this basis is a child support order filed with the court. The court issues a writ of execution based on this order at the request of the CSED.

Writ of Execution--General Context. The CSED uses the writ of execution to enforce payment of a support debt in cases where the obligor owns salable property or cash. The writ is an **optional** enforcement tool, appropriate only when certain required (legal) conditions are met and certain additional CSED policy considerations have been applied. A determination about whether to use a writ in a particular case is highly dependent on the facts and overall management of the case.

As an enforcement tool the writ may be used alone, or along with other enforcement methods such as income withholding or tax offset. The enforcement effect of a writ may be produced by seizure of the property alone, if the obligor pays the support debt to recover the property before sale; or, enforcement may be by sale of the property and application of the proceeds.

Writs can be executed on material assets (land, buildings, automobiles, recreational vehicles, livestock, furniture, equipment, jewelry, art, etc.), or on cash or cash-equivalents. Seizable cash may take the form of bank accounts, securities, "till" cash on a business premises, income or benefits payable to but not yet received by the obligor, or other money assets.

Required Conditions for Obtaining Writ of Execution. A writ of execution is available only when all of the following conditions are met:

(1) **Support Order**--There must be a child support order in effect in the case in Montana.

(2) **District Court Basis**--The support order must be on file with the district court issuing the writ. To be "on file" the order must be

- an order of the district court,
- an order issued or registered by the CSED and abstracted to the district court, or
- a foreign order registered directly by the district court.

NOTE: County of Property Irrelevant to Court Basis. The property in question may be located in the same county as the court issuing the writ, **or in a different county**. Every Montana district court has the authority to order any Montana county sheriff to levy against property in the sheriff's county.

(3) **Status of Asset**--The asset that is the subject of the execution may be either real or personal property, and must be

- **identifiable and "located."** The CSED must be able to describe the asset and its location sufficiently to enable the sheriff to seize it. The CSED may request a writ for an asset that is not known but suspected to exist, such as an account at a particular bank;

- **salable or cash.** Non-tangible assets (such as the value of a business's name, license, or clientele) are not subject to writ.

- **owned by the obligor.** This includes assets (1) held (and owned) now by the obligor or (2) approved for distribution to the obligor at some time in the future. Assets most commonly seized before distribution are workers' compensation or other insurance settlements; inheritances; proceeds from lawsuits; wage or salary earnings; or proceeds from property, sales, or investments. Approval for distribution must be by the payor, an executor, the court, or some other entity authorized to distribute the asset.

  Sole ownership of the asset is not required; assets owned by the obligor and another party "in joint tenancy" are also subject to writ of execution. The region's legal staff should be consulted on all questions of execution on jointly owned assets.

- **located in Montana.** For purposes of obtaining a writ of execution, assets "located" in Montana are (1) assets physically located in Montana, (2) income whose payor is physically located in Montana, or (3) income paid by an out-of-state entity through a Montana agent. See section CS 250.1, Native American Jurisdiction, for further information on enforcing against assets in Native American cases; and

- **able to yield net proceeds beyond any claimed exemptions.** Certain types of property are exempt from execution. Exemptions may be unlimited (for the whole value), or subject to specified value limitations, depending on the property.

The obligor may claim a **limited "homestead" exemption** in a house up to $60,000 (the house must be the obligor's residence--see Title 70, Chapter 32, MCA).

The obligor may claim a **limited "net earnings" exemption** for 35% to 50% of the earnings (the exact percentage depends on the obligor's other support expenses and the number of months the judgment being enforced is past due--see section 25-13-614, MCA).

The obligor may claim other **limited exemptions** in
- a primary vehicle up to $2,500;
- personal property up to $4,500 aggregate value, or up to $600 for any one item (jewelry, firearms, crops, household furnishings, etc.);
- the tools of the obligor's trade up to $3,000; and
- any unmatured life insurance contract up to $4,000.

The obligor may claim **unlimited exemptions** in
- prescription health aids;
- public assistance benefits;
- veterans and social security benefits, except those based on remuneration for employment;
- medical benefits up to the cost of care;
- child and spousal support; and
- one burial plot.

For complete details of limited and unlimited exemptions see sections 25-13-608 and 609, MCA.

NOTE: Exemptions Not Applicable Beyond Amount of Obligor's Interest in Property. An obligor may claim an exemption from execution only to the extent the obligor owns an interest in the property. For example, if an obligor owns a $10,000 equity in a house that is mortgaged for an additional $35,000 and sold for $60,000, the obligor's "homestead" exemption would be limited to $10,000.

(4) **Support Debt**--The debt **need not be adjudicated** (reduced to a sum-certain judgment through notice and opportunity for hearing). However, the debt must be for an exact amount, and the CSED must be able to show, if necessary, how the debt accrued. Monthly accumulation records are not required with the writ request. There is no minimum amount set by the court or the CSED for obtaining a writ.

Generally the CSED uses the Debt Computation Worksheet to specify and document accrual of debt amounts for its own purposes. A region may, at its discretion, submit a Debt Comp with the writ request. The region may also set a minimum debt amount for requesting a writ.

NOTE: Status of Obligor Not Related to Writ Requirements. Location of the obligor is not necessary to proceed with a writ of execution. Also, the CSED does not need personal jurisdiction over the obligor: the court has subject matter jurisdiction to enforce its own order in Montana.

Further Considerations. Although technically eligible, not all cases that meet the above requirements will be suitable for enforcement by writ of execution. The CSED will also consider the following criteria in determining whether to proceed with a writ in a particular case:

(1) **Value of Asset at Sale**--Generally, the expected net proceeds from the sale of the asset should be great enough to justify the CSED time spent obtaining the writ. In some cases, however, it may be helpful to obtain a writ even when net proceeds will be small (to indicate to the obligor the CSED's continued interest in the case, or to encourage the obligor to pay the debt to keep the property from being sold). Net proceeds are equal to sale price less

- the amount of any prior liens on the property,
- any fees charged by the sheriff for storage or maintenance of the asset during the time between seizure and sale (including feeding livestock),
- payment to a joint owner of the asset proportionate to that person's interest in the asset
- the value of any exemptions claimed, and
- any fees charged by the sheriff for execution of the writ.

None of these costs is certain to occur--prior liens may have been paid off, the obligor may fail to claim exemptions (but, see NOTE below), or the sheriff may choose not to charge any fees. The caseworker should research the conditions surrounding the proposed sale of an asset to determine any likely costs.

NOTE: Exemption Policy. When property is seized under a writ of execution, both the obligor and the property holder are notified that certain statutory exemptions from execution may apply. The notices list the possible exemptions and, in the case of the obligor, the procedure for claiming an exemption. When the CSED knows an exemption will be claimed **or could be claimed**, and the net expected proceeds after any possible exemptions would be small, there may be an appearance the CSED is only taking the property "to harass," and is guilty of abuse of process. The region's legal staff should be consulted in all exemption situations, to ensure the enforcement action is an appropriate use of authority.

NOTE: General Caution in Obtaining Writs Against Non-Cash Assets. In addition to the deductions from sale price listed above, the CSED may incur substantial, pre- and post-sale expenses or responsibilities in executing on non-cash assets. For example, the CSED may be required to make detailed arrangements in aid of the seizure, transportation, storage, maintenance, sale, and final disposition of the asset; give notice of CSED actions to other parties holding an interest in the property; or take other actions required in converting the asset to a cash amount and distributing the receipts according to law. (Montana law also requires writ requestors to post a bond when substantial costs will be incurred by the sheriff, but Montana state agencies are exempt from this requirement (section 25-1-402, MCA).) **Regions should carefully consider the total "costs" to the CSED of executing on any non-cash assets before initiating a writ.** It is usually not practical to execute on jointly owned non-cash assets.

(2) **Role in Reducing Support Debt**--Generally a writ is appropriate only when debt reduction through routine methods (income withholding, regular voluntary payment) has been unacceptable. For non-paying cases a writ (if available) should always be considered. For paying cases, the region must use its discretion, as shown in the following examples:

EXAMPLE 1: The CSED is enforcing an obligor's current obligation and support debt through income withholding; there has been a hardship determination in the case, and the support debt is very large. An asset becomes available for execution by writ. The CSED may wish to proceed with the writ, to decrease the payoff time for the debt.

EXAMPLE 2: Although no employer is located, an obligor is making regular payments toward both current support and arrears, missing a payment only infrequently. The arrears payments are sufficient to pay off the debt within a reasonable time. An asset becomes available for execution by writ. The CSED may choose not to seize the asset, allowing the obligor to continue what has been an acceptable payment schedule.

(3) **Effect on Ability to Pay Support**--Generally a writ is appropriate only when the asset is not tied to the obligor's ability to pay support. For example, where the obligor owns inventory or equipment used in an income-producing business, the CSED may determine the asset is more valuable in the hands of the obligor than converted to cash. In a different example, the obligor may plan to use a soon-to-be-received asset (such as an inheritance) to set up or improve the output of a business--if the CSED believes the plan is dependable it may wish to allow the obligor to keep some or all of the asset for this purpose.

(4) **Convenience Compared to Other Forms of Enforcement**--A writ may be preferable to certain administrative means of enforcing the support debt if the administrative method
- involves significantly greater effort or cost on the part of the CSED
- involves a significant risk of the obligor dissipating the asset before the CSED can act (if the administrative method includes notice to the obligor, for example, and there is reason to believe the obligor wil sell or spend the asset or remove it from the Montana court's jurisdiction),
- involves a longer lead time before payment,
- will net less money toward the support debt, or
- will be less effective or less direct overall in enforcing payment.

(5) **Existence of a Reasonable Expectation of Privacy.** Where the property to be seized is located in the obligor's residence, or in any other area determined by the

sheriff or levying officer to be subject to a reasonable expectation of privacy, Montana statute requires a warrant of execution in addition to a writ. The court can issue a warrant of execution if the judge determines there is reasonable cause to enter, and to levy upon property in, an area otherwise protected by the obligor's right of privacy. "Reasonable cause" generally requires a showing that there is no other property of the obligor's available for levy and execution.

As a matter of policy the CSED does not proceed against property located in the obligor's private residence. In cases involving personal property located outside of the obligor's residence, the CSED proceeds only if it believes the right of privacy does not apply. Only in extremely rare situations, where the facts of the case appear to justify the additional proofs and actions required, will the CSED consider an exception to this policy. **In all cases involving possible privacy protections, consultation with and approval of the CSED staff attorney is absolutely required.**

Case Management: Writ of Execution Versus Warrant for Distraint. In cases where the seizure and sale of assets is appropriate to reduce a support debt, the CSED may initiate enforcement in one of two ways: (1) judicially, by writ, or (2) administratively, by warrant for distraint. A warrant for distraint operates much like a writ of execution except that the warrant for distraint

- is issued by the CSED and sent directly to the sheriff or levying officer without going through the court (does not require a district court "basis");
- is issued for adjudicated debts only; and
- can be issued at any time after the debt accrues (is not limited to issuance within a specified time after accrual, for debts incurred before October 1993).

Because of the requirement for an adjudicated debt, the warrant must be preceded by a notice or other proceeding alleging a specific debt and providing the obligor with an opportunity to dispute the debt amount. In general, a writ may be preferable to a warrant if the debt includes unadjudicated amounts; a warrant may be preferable if the entire debt amount has been adjudicated and (a) quick enforcement on the asset is essential, or (b) the support order is a foreign order not registered in Montana.

In practice, regions may find some county sheriffs are more willing to serve court-issued writs of execution than CSED warrants for distraint, probably because the CSED's direct distraint authority is still relatively new (at the time of this writing).

Executing on "Payable" Assets--Timing Considerations. It is important to determine, as closely as possible, when a payable asset will be distributed to the obligor, and to time the issuance of the writ accordingly. If the final approval or order for the payment has not been given, the obligor may be able to have the payment made to another recipient. If the payment is completed more quickly than anticipated, the obligor may be able to dispose of the asset before the writ can be served.

Executing on "Payable" Assets--Montana Agents. To be enforceable in Montana, a writ of execution for an asset held by an out-of-state payor must be served on a Montana agent of that payor. It is not necessary for the Montana agent to ever hold or process the asset, as long as it represents the payor for purposes of service of process. Official Montana "service of process" agents for out-of-state corporations are listed with the Secretary of State.

NOTE: Montana Insurance Commissioner. For purposes of service of process, the Montana Commissioner of Insurance is a Montana agent for all out-of-state insurance companies having Montana agents. The CSED may at times find it more convenient to serve a writ directly on the Commissioner (via the Lewis and Clark County Sheriff) than to try to locate and serve the individual Montana agent for the company. (The Montana Secretary of State is not an agent for service of out-of-state corporations, however.)

Recovery of Property by Obligor. Generally, the CSED will allow the obligor to recover seized property before it is sold if the obligor pays the CSED the full amount of the support debt, or a partial amount agreed to by the CSED. The CSED will then notify the sheriff the judgment has been satisfied or partially satisfied, and the property should be returned to the obligor. Additionally, the obligor may recover an amount equal to any statutory exemption in the money or property seized by claiming the exemption within 10 working days after being served with a notice of seizure (see Sheriff's Time Frames below). Recovery of property after sale is limited to "redemption" of real property, and must be arranged by the obligor with the purchaser within one year.

Sheriff's Time Frames: Executing on Writ, Forwarding Proceeds. The sheriff must execute a writ within 60 days after receiving the writ. Execution includes seizing and, if necessary, selling the asset identified in the writ. The sheriff must then return any proceeds of the execution to the CSED within 60 days, but not sooner than 10 days, after execution.

Further, to allow the obligor to claim an exemption in the money or property seized, the sheriff must serve a notice of seizure on the obligor within 5 days after seizing the money or property. The sheriff may not sell or distribute any proceeds of the execution for at least 10 working days after serving the notice of seizure.

Court Requirements. All documents presented for filing with the district court are subject to the format and paper-content requirements of the Montana Uniform District Court Rules (see 25-19-Rule 1, MCA). In addition, the original issued writ of execution must be returned to the Clerk of Court after the levy is completed. CSED's system-generated documents, and the PROCEDURES in this section, are designed to comply with both requirements.

District Court's Time Frames. Upon receipt of a timely request from the obligor for a hearing to claim an exemption in the money or property seized, the court must conduct the hearing within 10 working days after the date the request was received.

Distribution of Proceeds. The following restrictions apply to the distribution of writ proceeds:

(1) **Proceeds may be applied only to the case for which the writ was issued.** Because the district court's writ authority over an obligor extends only to enforcement of the support order the court has issued or filed, the writ may not be used to enforce debts incurred by the obligor in other cases.

(2) **Proceeds may be applied only to the specific debts for which the writ was issued.** In applying to the court for a writ in a particular case, the CSED certifies the total amount of the debt the writ will enforce, and states how and through what date the debt has been incurred. Amounts owed by the obligor when the proceeds are received are payable only to the extent the amounts were included in the debt basis of the writ.

Where restriction (1) or (2) above applies, the region **must** enter on SEARCHS a Manual Payment Instruction (MPI) specifying the correct distribution of writ proceeds, as follows:

Multiple Obligees--Where the obligor owes arrears or other debt in more than one case, the MPI should target the payment to the account(s) for the correct obligee.

Unavailable Debt--Where the obligor's total debt in the case includes amounts not certified to the court (for example, the debt was incurred after the writ was requested, or was incurred earlier than six years before the request (see "Statute of Prohibition" below)), the MPI should specify, by account, any amounts to be left unpaid.

Caseworkers should determine whether an MPI will be needed **before** releasing a writ proceeds check for posting to SEARCHS accounts.

Statute of Prohibition for Debts Accrued Before October 1993. All support debts incurred before October 1, 1993, are subject to the general time limit governing writs of execution--that is, the Clerk of Court cannot issue a writ to enforce a debt incurred more than six years before the writ is requested (the "request" date is the date the court receives the CSED's application). This restriction can be removed by special "leave of the court," but obtaining the exception often has practical disadvantages. The region's legal staff should be consulted about pursuing any "prohibited" amounts. For support debts incurred on or after October 1, 1993, the Clerk of Court may issue a writ at any time within 10 years after the termination of the support obligation in the case.

In calculating the total debt amount to be submitted to the court, **the region must first determine the correct debt history by assuring all payments received in the case have been applied to the oldest debt first. Then**, using the corrected information on amounts and accrual dates for the unpaid debt, the region must identify and (generally) exclude any amounts that were incurred both (1) before October 1, 1993, **and** (2) more than six years before the writ will be requested.

NOTE: Inclusive Determination of Debt--Certain Districts. A few district courts in Montana require leave of the court for all writs, regardless of the debt accrual date. Regions may choose to include "prohibited" debts in the amounts certified to these courts.

PROCEDURES

The following basic actions must be performed by the CSED for successful writ processing. **However, individual staff responsibility for a given action may vary from region to region.** Responsibility may be assigned to the caseworker, the supervisor, the paralegal, or the staff attorney, depending on regional preference. Regional variations also occur in the individual steps under each basic action. Please identify the steps and responsibilities that apply to your region; you may wish to add to these pages any specific internal (written) procedures in use in your region.

PLEASE NOTE: The following PROCEDURES contain steps taken by the sheriff and the district court, as the CSED understands them. These steps are included for purposes of context only, and do not assert or require the stated actions. **The CSED's policies and procedures are not binding on the sheriff's office, the district court, or any other external agency**.

"SHERIFF" DEFINED: The term "sheriff" as used in these PROCEDURES means the county sheriff or any other levying officer.

Caseworker

1. Identifies a case appropriate for a writ of execution by applying the following tests:
   a. The obligor in the case has **identifiable asset(s)**.
   b. The case satisfies the **required conditions** for a writ (support order, asset, and debt status--see "Required Conditions," POLICY).
   c. Case facts relating to **further considerations** are positive (asset value, enforcement effect, comparative convenience, and privacy protections--see "Further Considerations," POLICY).

   If the case is appropriate for writ enforcement except that the support order is not on file in a Montana district court, takes actions to abstract the order to a district court. For foreign orders, obtains a district court basis by either (1) registering the foreign order with the CSED and then abstracting to district court or (2) arranging for registration of the order directly with the court.

   Identifies the county where the **asset is located**--this is the county whose sheriff must serve the writ.

   Identifies the judicial district court where the **support order is filed**--this is the judicial district whose Clerk of Court must issue the writ.

   If the asset identified for execution is a non-cash asset, immediately notifies and works with the CSED staff attorney to coordinate actions by the CSED, the sheriff, and others for successful seizure, maintenance, sale, and proceeds distribution.

2. Prepares a writ application package containing the following documents:

NOTE: Court Documents. Items (1), (2), and (7) below are subject to special paper requirements for district court filings (see "Court Requirements," POLICY). All originals and copies sent in this step must be printed on the required paper.

NOTE 2: Heading Adjustments. Items (1), (2), (4), (6), (7), and (8) below share a standard, system-generated heading format. Regions or individual CSED staff attorneys may, at their discretion and within court parameters, adjust the headings in these documents to accommodate style preferences or the facts of the case.

(1) Form CS-504.1A, Writ of Execution (original and three copies)--directing the sheriff of the county identified in step 1 to levy against the property described in the writ, and to return service and any proceeds to the CSED.

(2) Form CS-504.1F, Affidavit and Application for Writ of Execution (original)--swearing to the debt amount and how it was accrued, stating the CSED's authority to enforce the case, and bearing the notarized signature of the CSED staff attorney.

(3) Form CS-501.1B, Debt Computation Worksheet, with certification (two originals)--showing the monthly accrual of the support debt and bearing the notarized signature of the caseworker.

(4) Form CS-504.1E, Praecipe to Clerk of Court for Writ of Execution (original)--asking the Clerk of Court for the judicial district identified in step 1 to
- issue, or have issued, the enclosed Writ of Execution;
- conform two copies of the issued writ (mark or stamp two of the submitted copies so they become official court copies); and
- send directly to the appropriate sheriff the issued writ, the conformed copies, and items (6) through (10) below.

NOTE 1: Return-of-Copy Option. The praecipe may, at the region's option, ask the Clerk of Court to send an additional conformed copy of the writ directly to the CSED.

NOTE 2: Return-of-Writ Option. The praecipe may, at the region's option, ask the Clerk of Court to send the issued writ (with the two conformed copies) directly to the CSED for forwarding to the sheriff.

(5) Pre-addressed, stamped envelopes--for the clerk of court's mailing or delivery to the sheriff and, if a "return" option is elected in NOTE 1 or 2 above, to the CSED.

(6) Form CS-504.1D, Sheriff's Praecipe for Writ of Execution (original)--to the sheriff of the county identified in step 1, alerting the sheriff to the requirements added to the property seizure statutes in 1999, and providing a checklist of the steps the

sheriff must now take to execute the writ. (This document is not included in the package sent to the Clerk of Court if the region elects the return-of-writ option in item (4).)

(7) Form CS-504.1B, Notice of Seizure (two originals)--notifying the obligor that property was seized and an exemption may be available, and stating the procedure for claiming the exemption.

(8) Form CS-504.1C, Notice of Levy and Exemptions (original)--notifying the property holder on whom the writ is served of the levy against the obligor; directing the property holder to transfer the property to the sheriff; and describing the exemptions from execution provided by Montana statute.

(9) If applicable, additional documents required by the district court or the sheriff's office for execution of a writ, or required in connection with the seizure and sale of a non-cash asset.

EXAMPLES: Answer to Garnishment; arrangements for sheriff's sale; agreements for costs of maintaining property before sale; notice to holders of superior claims.

Consult your CSED staff attorney or paralegal to determine which of the above documents may apply.

(10) Pre-addressed, stamped envelopes--for the sheriff's mailings to the obligor and the CSED.

Assembles the complete writ package containing (originals and any required copies):
- Writ of Execution
- Affidavit and Application
- Debt Computation Worksheet (one)
- Praecipe to Clerk of Court
- Envelope addressed to the CSED (if applicable)
- Sheriff's package (assembly described below).

Assembles the "sheriff's package" by inserting in the envelope addressed to the sheriff the originals and any required copies of the following items, leaving the envelope unsealed:
- Sheriff's Praecipe
- Notice of Seizure
- Notice of Levy and Exemptions
- Debt Computation Worksheet (one)
- Additional documents if applicable
- Envelopes addressed to the obligor and the CSED.

Sends the complete writ package by regular mail to the clerk of court for the judicial district identified in step 1; retains a copy of the package for the case file. Enters a

SEARCHS case note for the package sent to the clerk for issuance; monitors for the sheriff's return of service.

3. If the region elected the return-of-copy option in step 2, monitors for return of the conformed copy of the writ from the clerk of court; enters a SEARCHS case note for the writ received, and resolves any problems concerning issuance of the writ.

4. If the region elected the return-of-writ option in step 2, monitors for return of the issued writ and two conformed copies of the writ from the clerk of court; enters a SEARCHS case note for the writ received, and resolves any problems concerning issuance of the writ. Prepares and sends to the sheriff by regular mail the issued writ, the conformed copies, and items (6) through (10) in step 2 above, and enters a SEARCHS case note for the documents sent directly to the sheriff.

5. If notified by the sheriff that a warrant of execution is required for the property in question, consults with the CSED staff attorney to determine whether continued enforcement against the property is advisable in the case. If so, works with the staff attorney to take appropriate action (see POLICY).

   NOTE: Rarely Used Procedure. Because the CSED normally does not pursue property located in an obligor's private residence, it is unlikely this step will ever apply in CSED cases.

Sheriff

6. Within 60 calendar days after the date of issuance, executes the writ by taking the following actions:
   (1) Serves the writ and the notice of levy on the property holder
   (2) Seizes the property or arranges for transfer of the property to the sheriff's control or possession.

   NOTE: Service Procedures. The sheriff "serves" the writ on the property holder by personally presenting, but retaining possession of, the original (issued) writ, and furnishing a conformed copy of the writ for the property holder to keep. The sheriff "serves" the notice of levy by personally delivering the original document.

7. Within 5 calendar days after execution of the writ, completes the certificate of mailing on both originals of the Notice of Seizure. To one original of the Notice of Seizure attaches
   - the remaining conformed copy of the Writ of Execution, and
   - the Debt Computation Worksheet.

   Sends the notice with attachments to the obligor by regular mail. Monitors for notification of a hearing request (by sheriff's copy--see NOTE below, or by other notification) within 10 working days plus 3 mailing days after the date entered in the certificate of mailing.

a. If notification of a hearing request is timely received, takes no action against the property until notified of the court's determination; then proceeds to step 12.

b. If no notification of a hearing request is timely received, proceeds immediately to step 12.

NOTE: Response Requirements. The obligor may respond to the Notice of Seizure by filing a request for an exemption hearing with the district court within 10 working days of the date the sheriff mailed the notice. The obligor must mail copies of the request for hearing to both the sheriff and the CSED on the date the request is filed.

Caseworker

8. Upon being notified (by receipt of the required copy--see above NOTE, or directly by the court) that the obligor has requested, and/or the court has scheduled, an exemption hearing, enters the appropriate SEARCHS case notes for the hearing requested and scheduled, and advises the CSED staff attorney. If required, works with the attorney and participates in the hearing as appropriate. Proceeds to step 11.

CSED Staff Attorney

9. Upon being notified the obligor has requested an exemption hearing, takes appropriate steps to resolve the issue. If the matter cannot be resolved, represents the CSED at the exemption hearing, and enters a SEARCHS case note for the hearing held.

   NOTE: Determining Timeliness. If the timeliness of the obligor's request is important to negotiations or to the CSED's case at hearing, further investigation may be required to determine the actual dates of sheriff's service and the obligor's response.

District Court

10. Upon receipt of a written request for an exemption hearing from the obligor, schedules the hearing for a date within 10 working days after the date the request was received, and informs the parties. Conducts the hearing and makes a determination on the obligor's claim according to MCA Title 25, Chapter 13, or other provisions of state or federal law. Issues an order determining the claim, and forwards copies of the order to the obligor, the sheriff, and the CSED.

Caseworker

11. If an exemption hearing is held, monitors for receipt of the order from the hearing. Upon receipt, consults with the CSED staff attorney regarding any appropriate steps, and enters a SEARCHS case note for the determination received.

Sheriff

12. Determines whether the gross proceeds expected from the seizure (and sale if necessary) of the property exceed the total of any superior liens, sheriff's fees, and exemptions.

    a. If so, sells the property (if necessary), and distributes the proceeds as required to satisfy the applicable liens, fees, exemptions, and CSED judgment; distributes any excess proceeds to the obligor.

    b. If not, returns the property to the obligor.

13. Completes the writ of execution process by preparing and sending to the CSED

    - a return-of-service document listing the date and method of service of the writ of execution and the accompanying notice of levy, and the amount of any proceeds payable to the CSED;

    - a check for the amount of the net proceeds, if any, up to the amount of the writ;

    - the original (issued) writ of execution;

    - the (remaining) original Notice of Seizure, showing the date the notice was mailed to the obligor;

    - any additional documents as appropriate (for example, an Answer to Garnishment from a third party).

    NOTE: Continuing Levy. If the proceeds do not satisfy the full amount of the writ, and if additional levies may be practical, the sheriff may retain the original writ and seize additional amounts that become available within the 60 days before the writ expires.

Caseworker

14. Upon receipt of the sheriff's return of service, enters the appropriate SEARCHS case notes for the writ served, the notice of seizure mailed, and the service returned.

    Prepares and sends by regular mail a filing package for the Clerk of Court containing

    (1) The original (issued) Writ of Execution
    (2) The original Notice of Seizure, with the certificate of mailing completed by the sheriff
    (3) The sheriff's original return-of-service document
    (4) Form CS-503.7A, Praecipe to Clerk of Court (original), asking the Clerk of Court to file the attached documents with the district court

(5) If applicable, a Satisfaction of Judgment or Partial Satisfaction of Judgment, signed by the CSED Staff Attorney. (This is a non-SEARCHS document, usually maintained in the region as a word processing file; it is subject to format and paper requirements of the district court (see "Court Requirements," POLICY)).

Retains a copy of the package for the case file; enters a SEARCHS case note for the executed writ and notice of seizure sent to the clerk of court for filing.

NOTE: Filing of Original Writ Imperative. **This step is crucial** in preserving successful relations with the Clerk of Court, and in obtaining future writs of execution.

Caseworker/Regional Staff

15. Immediately upon receipt in the regional office of the proceeds from the writ, arranges for processing as follows:

    a. Copies the check, sends the original to TAPP with the appropriate "back-up" documentation (or notation on the check) **identifying the pay source (writ of execution)** and the obligor (SEARCHS participant identification number); retains a copy for the case file.

    b. In cases involving multiple obligees or other special distribution requirements (see "Distribution of Proceeds," POLICY), prepares a Manual Payment Instruction (MPI) to supplement the information submitted with the check, and enters the MPI on SEARCHS. (At its option, a region may choose to enter an MPI for every case involving writ proceeds; however, this is not required in most cases.)

    c. Informs the Regional Manager of receipt of the proceeds and of the net dollar amount, for lump-sum collections tracking purposes.

ENFORCING A SUPPORT ORDER
Support Liens—Overview

CS 507.1

SUPERSEDES

CS 507.1, Support Liens--Overview, August 22, 1997

REFERENCES

45 CFR § 303.103; MCA §§ 40-5-185, 40-5-227, 40-5-248, 40-5-271, and 25-13-6

INTRODUCTION

This section discusses the types and characteristics of liens available under Montana law, sets a policy for establishing liens in appropriate cases, and sets procedures for determining when lien establishment is appropriate. Following sections will discuss perfecting support liens, enforcing support liens and releasing support liens. These procedures do not apply to Lottery Liens. For specific instructions on Lottery Liens see CS 507.5.

Regulations at 45 CFR § 303.103 require that liens be imposed against real and personal property in all appropriate cases. Montana law at § 40-5-248 describes the creation of administrative support liens.

DEFINITIONS

A **lien** is a charge, security or encumbrance on property that prevents the sale or transfer of the property without the permission of the lienholder. Liens are not judgments; a judgment may give rise to a lien.

A **lienholder** is a creditor whose claim or debt is secured by a lien against a particular piece of property. Because of the lien, a lienholder has greater rights against a debtor than ordinary creditors.

Real property or realty is defined as land and things attached to the land, such as a house or timber. To be effective against realty, a notice of lien must be filed in the county or counties in which the real property is located.

Personal property or personalty is defined as everything else which can be owned and which is not real property. Different requirements for notice of lien are imposed by law, depending on the type of personal property.

Exempt property is property to which a lien cannot be attached. Montana law defines what property a debtor owns which may not be used to satisfy a judgment. This exempt property cannot be taken by writ of execution. Some examples of exempt property are: welfare benefits, professionally prescribed health aids, burial plots, the debtor's interest in a motor vehicle (up to $2,500), the debtor's interest in tools of the trade (up to $3,000). See MCA Title 25, Chapter 13, Part 6 for a complete list of exempt property.

Liens imposed by operation of law are liens which are automatically created by the following CSED actions:

- entry of a final decision in a contested case which finds the obligor to owe a sum-certain debt; or

- registration of a support order from another tribunal under MCA § 40-5-271, where that order includes a finding that the obligor owes a sum-certain amount of delinquent support.

Liens by operation of law are also automatically created in the district court by:
- accrual of unpaid support under a court-ordered support obligation or an abstracted administrative support order;
- entry of a court-ordered money judgment;
- filing of a warrant for distraint; or
- filing of a consent order or abstracted administrative order establishing an arrearage.

Consensual liens are liens which are voluntarily given to the lienholder by the debtor. A mortgage on real property is an example of a consensual lien. Other consensual liens include UCC (Uniform Commercial Code) liens on personal property or vehicle liens (including mobile homes) which may only be obtained by noting the lien on the appropriate title document and mailing it and the required fee to the Registrar of Motor Vehicles. (Consult a CSED staff attorney for updated fees and procedures.)

Consensual liens are effective enforcement tools because they can be applied to exempt property, such as an obligor's tools or homestead. Obligors may be willing to grant the CSED a voluntary lien in order to avoid the application of some other enforcement technique, such as a writ of execution, bonding or contempt proceedings. Also as part of a bonding case, the court can order the obligor to encumber property -- to grant a lien -- as security for the payment of future support (see CS 508.5, "Utilization of Bonding for Future Payments.")

A **warrant for distraint** is an order, issued by the department under seal, directed to a sheriff or other levying officer. The order commands the sheriff or levying officer to seize and sell non-exempt property belonging to an obligor in order to satisfy a support lien. A warrant for distraint has the same effect as a writ of execution, issued by the district court.

A **levying officer** is a registered process server who has posted a surety bond with the district court. This process enables a person who is not a law enforcement officer to serve writs and warrants for distraint for the enforcement of judgments. A levying officer may not levy on a judgment that exceeds the value of the posted bond.

POLICY

While the CSED may always rely on general judgment liens imposed by law, the CSED will take steps to impose liens on an obligor's non-exempt property as follows:

1. **Administrative support liens** are automatically imposed by operation of law against all realty and personalty belonging to an obligor whenever:
    a) the CSED enters a final decision in a contested case which includes a finding that the obligor owes a sum-certain debt; or

b) an order which includes a finding that the obligor owes a sum-certain amount of delinquent support is registered with the CSED under MCA § 40-5-271.

Administrative support liens are in addition to any other lien created by law.

2. **General judgment liens** are automatically imposed by operation of law on all support arrears accrued under the terms of:

    a) Montana district court judgments or orders;

    b) judgments and orders of other states registered with the district courts pursuant to MCA § 40-5-185;

    c) administrative judgments and orders abstracted to district courts pursuant to MCA § 40-5-227.

3. **Consensual liens** shall be imposed in all appropriate cases on an obligor's property in accordance with law whenever a support obligor executes the necessary documents.

4. **Transcripts of docket** shall be filed in all appropriate cases in accordance with law in each and every Montana county in which an obligor owns non-exempt real property, except those counties with an existing general judgment lien.

APPROPRIATE CASES

For the purposes of this section, an "appropriate case" is a case meeting all of the following characteristics:

- existence of a support order or judgment;

- an outstanding delinquency greater that $150.00;

- the order is unenforceable by income withholding. The term "unenforceable by income withholding" is defined as a case in which the obligor either receives no income, or receives income from a source not qualifying as a "payor," or a case in which income withholding is in place, but the case record indicates that arrears will not be paid-in-full within two years;

- the obligor owns non-exempt property with a value exceeding the costs of levy and execution, and any prior, superior liens; and

- in the case of a motor vehicle (defined as any item for which the Department of Justice issues a certificate of ownership) the estimated net value of the vehicle (total value less $2,500, for a primary vehicle) not only exceeds the above costs, but also represents a significant collection in the particular case; also, one or both of the following conditions apply: (1) there is a good likelihood the obligor will sell the vehicle while its value to the

CSED still attains; or (2) the obligor has some income, so there is some possibility of obtaining support payments in response to the lien incentive.

NOTE: Estimating Value and Likelihood of Sale of Vehicle. In estimating the value of a vehicle the caseworker may consider any of the following factors: (1) the value assigned by the industry (this is the dollar amount listed for the year and make of the vehicle in the National Automobile Dealers Association's "bluebook" or other equivalent resource), (2) the approximate value suggested by an automobile dealer or other knowledgeable party contacted informally, or (3) if applicable, any value the vehicle may have by collectors' standards as an "antique" or "classic" vehicle (listings are available). Factors affecting the likelihood of sale are case-specific, but **may** include whether the car is the obligor's primary means of transportation, whether a trade-in is feasible, or whether a financial emergency might force the sale of the car as a last resort.

PROCEDURES

Determination of whether CSED action is required to establish administrative support lien, or to extend existing liens.

Caseworker

1. Reviews case record to determine if it is an "appropriate case."

2. If so, reviews the case record to determine if the obligor owns any non-exempt real or personal property:

   a) If the obligor owns non-exempt property in Montana, proceeds to step 3; or,

   b) If the obligor owns property in Montana which is or may be claimed to be exempt, proceeds to step 5; or,

   c) If the case record reveals no non-exempt property owned by the obligor in Montana, but reveals the existence of non-exempt real or personal property in another state or in a foreign country with which Montana has a reciprocal support enforcement agreement, initiates appropriate interstate remedy (see CS 506, "Interstate Enforcement," and CS 508.15 "Full IRS Collection Services,"; or,

   d) If the case record reveals no non-exempt property owned by the obligor anywhere in the United States or in any foreign jurisdiction with which Montana has a reciprocal support enforcement agreement, takes steps necessary to locate assets (see CS 300.1, "Location" and sections following).

3. Reviews the case record to determine if an old "Warrant for Distraint" has been previously filed with the district court. If a warrant has previously been filed with the district court under old CSED procedures, please consult your regional CSE attorney for further forms and procedures.

4. Reviews the case record to determine if:

   - the obligor's support arrearage has been reduced to a sum-certain debt under a final CSED decision in a contested case under Title 40, chapter 5; or

   - a foreign support order with a finding of a sum-certain delinquency has been registered with the CSED in accordance with MCA § 40-5-271.

   NOTE: Federal income tax offset proceedings are not contested cases under Title 40, chapter 5. Consequently, there is no lien effect exerted by an administrative decision on a federal income tax offset proceeding.

   a) If not, proceeds to establish a sum-certain debt by serving a "Notice of Intent to Withhold Income," CS-510.3; or a "Supplemental Notice of Intent to Withhold Income," CS-510.10 or other appropriate notice under Title 40, Chapter 5 which is designed to result in a finding regarding the obligor's sum-certain arrearage debt.

   b) If so, proceeds to CS 507.2 "Perfecting A Support Lien."

5. If the obligor owns exempt real or personal property in Montana, and the case record indicates that the obligor is likely to be cooperative, attempt to secure one or more of the following consensual liens:

   - UCC (Uniform Commercial Code) lien
   - mortgage on real property (first or subsequent)
   - lien on motor vehicle.

   Consults CSE staff attorney for instructions on securing consensual liens.

SUPERSEDES

CS 507.2, Perfecting a Support Lien, August 22, 1997

REFERENCES

MCA § 30-9-107, 30-9-401; MCA § 40-5-247

INTRODUCTION

Liens do not, of themselves, give the CSED authority to seize and sell an obligor's property. Nevertheless, liens are effective passive enforcement devices because the CSED can often insist on full or partial payment of past due support in return for permission to sell encumbered property. Some or all of the proceeds of a sale can usually be directed to the CSED as a part of the transaction. It is the sale itself which creates the need to pay the lien, as well as the funds to do so.

Before a lien is effective as an encumbrance on property, persons must know that a lien exists. A support lien is **perfected** when persons with an interest in the property encumbered have notice that a lien against the property has been created. A "Notice to Clerk of Court of Support Lien," form CS-507.2A, filed with the proper body or recording agency, perfects a support lien.

Perfecting a lien may not always be necessary in order to achieve a lien effect. It may be enough to put persons who hold property of the obligor's on notice of the lien. This notice may prompt them to notify the CSED when the obligor's property is sold and funds are available for execution. However, failing to perfect the lien will prevent the CSED from asserting any remedies which it might otherwise exercise against third parties who ignore the notice of lien.

The CSED may also serve a "Notice of Support Lien," form CS-507.2B, on any person, firm, corporation, association or political subdivision or department of the state which holds real or personal property that is due, owing or belonging to an obligor. Once notice is received, the entity holding the obligors' property may be liable for the entire amount of the support lien if it distributes or disposes of the property contrary to the notice. Personal property includes the obligor's share of an estate, workers' compensation benefits and any proceeds or potential proceeds due to an obligor from a lawsuit.

Once a support lien is perfected, it follows the encumbered property. If real property is sold or transferred without release of the lien, the CSED may recover the lien amount (up to the value of the obligor's former interest in the property) from the new owner or the title insurance company. Liens also follow encumbered motor vehicles, or other property for which the Department of Justice issues a certificate of ownership. If an obligor sells other kinds of encumbered personal property, a good faith buyer of the property who has no knowledge of the support lien takes the property free of the lien.

PRIORITY OF SUPPORT LIENS

From the date it is perfected, a support lien has priority over other encumbrances **except**:

- any other liens or security interests which were perfected before the support lien;

- a mortgage, used by the obligor to purchase the real property encumbered by the mortgage;

- any perfected **purchase money security interest**. A purchase money security interest may arise if an obligor purchases a piece of personal property, and pledges the item purchased as collateral for the loan.

POLICY

PERFECTING A SUPPORT LIEN AGAINST REAL PROPERTY

To perfect a support lien against an obligor's real property, file a "Notice to Clerk of Court of Support Lien" (CS-507.2A) with the Clerk of District Court in each county where an obligor owns an interest in real property. In addition, notices may be filed with the District Court in any county in which the obligor may acquire property in the future.

PERFECTING A SUPPORT LIEN AGAINST MOTOR VEHICLES

To perfect a support lien against an obligor's motor vehicle (where “motor vehicle” or “vehicle” is defined as any item for which the Department of Justice issues a certificate of ownership), submit a "Notice of Support Lien" (CS-507.2B) to the CSED’s central office in Helena, to be filed with the Department of Justice's Motor Vehicle Division (MVD) in Deer Lodge. The CSED will file vehicle liens in monthly batches; the MVD will perfect the liens by entering them in the state data base of motor vehicle liens, and collecting the fees for the liens from the trust fund established by the CSED for that purpose. Regardless of the date listed on an individual Notice of Support Lien, the lien is not perfected until the MVD processes the lien and collects the fee.

A person calling the MVD during regular business hours with the title number or serial number of a vehicle can obtain current information about whether a child support lien has been asserted against that vehicle. Also, the MVD regularly issues a list of vehicles with existing child support liens. The CSED mails this list to interested parties (automobile dealers, vehicle financing and lending agencies) each time it is updated.

If a purchaser (dealer or individual) or lender discovers a child support lien on a vehicle, the purchaser or lender may decide not to proceed with an intended transaction involving the vehicle. Or, the parties may seek to obtain release of the lien as part of the purchase transaction. A lien that escapes the notice of the purchaser or lender despite efforts to discover it (possibly because of the timing of the transaction) remains in effect as an encumbrance on the vehicle. See section CS 507.4, Releasing a Support Lien, for remedies available to affected parties.

PERFECTING A SUPPORT LIEN AGAINST OTHER PERSONAL PROPERTY

Filing a support lien with the secretary of state's office perfects a support lien against non-licensed, non-titled personal property. Generally, this type of lien would be most useful against an obligor who owns non-exempt property, such as farm machinery or logging equipment. Sometimes, a determination of non-exempt status of such property will require an examination of recent case law decisions. Please consult your regional CSED attorney with questions regarding liens against personal property.

PROCEDURES

The following procedures are used to perfect administrative support liens asserted by the CSED, or to perfect liens registered with the CSED lien registry pursuant to MCA 40-5-263(7).

Caseworker

1. REAL PROPERTY: Upon a determination that the CSED may exert a support lien against an obligor's real property,

   a) completes form CS-507.2A, "Notice to Clerk of Court of Support Lien." Makes appropriate entry to SEARCHS.

   b) Makes at least four copies of original. Retains one copy for file. Enters list of counties where filed on SEARCHS LIN screen. Mails one copy to obligor, one copy to obligee. Forwards one copy to the office of the ALJ for the support lien registry.

   c) For each Montana county in which the obligor owns non-exempt real property, prepares form CS-503.7A "Praecipe (Clerk of Court)." Mails duplicate originals of notice, along with praecipe, to the applicable district court(s).

2. MOTOR VEHICLES or other items for which the Department of Justice issues a certificate of ownership: Upon a determination that the CSED may exert a support lien against an obligor's motor vehicle(s),

   a) completes form CS-507.2B, "Notice of Support Lien". Makes appropriate entry to SEARCHS. For interstate liens registered under MCA 40-5-263 where the underlying order does not establish a sum-certain amount of delinquent support, determines lien amount using updated debt computation provided by initiating state, and subsequent payments reported to or collected by the CSED.

   b) Makes four copies of original. Retains one copy for file. Mails one copy to obligor, one copy to obligee. Forwards one copy to the office of the ALJ for the support lien registry. Mails original to CSED Administrative Support Unit in Helena.

CSED Administrative Support Unit

c) Shortly before the third Wednesday of each month assembles all forms CS-507.2B received from regions since last batch submitted, and mails to Department of Justice, Motor Vehicle Division (MVD) in Deer Lodge. Monitors for receipt of updated list of perfected liens from MVD; immediately upon receipt of list mails copies to Montana automobile dealers and lending institutions.

Caseworker

3. PERSONAL PROPERTY: Upon a determination that the CSED may exert a support lien against an obligor's personal property, other than motor vehicles,

   a) completes form CS-507.2B, "Notice of Support Lien." Makes appropriate entry to SEARCHS. For interstate liens registered under MCA 40-5-263 where the underlying order does not establish a sum-certain amount of delinquent support, determines lien amount using updated debt computation provided by initiating state, and subsequent payments reported to or collected by the CSED.

   b) Makes four copies of original. Retains one copy for file. Mails one copy to obligor, one copy to obligee. Forwards one copy to the office of the ALJ for the support lien registry.

   c) Consults with CSED staff attorney for appropriate place for filing of notice, in accordance with MCA § 30-9-401.

   d) Mails original to appropriate filing place, along with any required fee.

   e) If the personal property is cash (for example, funds payable by an insurance company, or to an account in a financial institution), tracks payments received in the case to identify any unexpected collections that may be related to the support lien. If at any time the CSED receives a direct payment from the property holder in response to the Notice of Support Lien--without benefit of any intervening seizure action by the CSED--**immediately** proceeds in coordination with the regional legal unit in steps i) through v) below:

      i) **Places the affected accounts on hold** to prevent disbursement of the collection.

      ii) Informs the regional legal unit of the collection and related circumstances.

Regional Legal Unit

      iii) Based on the facts of the case, prepares a notice package containing a notice of seizure, a request for exemption hearing, and a certificate of mailing; sends the package to the obligor by regular mail.

Caseworker

iv) Monitors for the obligor's response to the notice of seizure and takes action in section CS 507.3 as applicable.

v) When due process has been satisfied, removes the hold on the accounts, sends instructions to TAPP for releasing the collection, and proceeds as applicable in section CS 507.3.

SUPERSEDES

CS 507.3, "Enforcing a Support Lien," September 8, 1999.

REFERENCES

MCA § 25-13-801 et seq.; MCA § 40-5-247.

POLICY

Applicability. This section contains procedures for enforcing a support lien by seizing property due, owing, or belonging to the obligor. **Where the property is state lottery winnings, special procedures in section CS 507.5, Lottery Liens, apply; do not proceed with a warrant for distraint in this section until all applicable requirements in section 507.5 have been met.**

Introduction. Support liens are enforceable by service of a warrant for distraint. This method is available regardless of whether the underlying lien has been perfected by the CSED.

In the case of a perfected lien, the notice of support lien commands a third party in possession or control of an obligor's property to notify the CSED regarding the existence or pending sale of the property. Upon notification, the CSED will prepare and issue a warrant for distraint to a sheriff or levying officer.

In the case of an unperfected lien (existing only by operation of law), the CSED will issue the warrant for distraint directly upon identifying appropriate property.

Use of the Warrant for Distraint: Administrative Options. The CSED can realize a cash collection from the property of the obligor in three ways; two of these require a warrant for distraint, the other may involve a warrant for distraint but generally does not:

(1) Warrant for Distraint with Notice of Support Lien. The CSED discovers money or other property due the obligor from another party. To secure the property for execution the CSED perfects a lien on the property by filing the appropriate Notice of Support Lien (section CS 507.2). Before transferring the property to the obligor the other party notifies the CSED, which then executes on the property via warrant for distraint.

EXAMPLE: Insurance settlement (the insurance company notifies the CSED when the payment is ready, and pays the money to the levying officer).

(2) Warrant for Distraint without Notice of Support Lien. The CSED discovers money or other property of the obligor's on deposit with another party or held by the obligor's business. The CSED executes on the property via warrant for distraint. In this situation perfection of the support lien prior to execution is neither required nor appropriate.

EXAMPLES: Bank account (the bank pays the levying officer); business "till" contents (the levying officer seizes the cash).

(3) Notice of Support Lien without Warrant for Distraint. The CSED perfects a lien on the obligor's property by filing the appropriate Notice of Support Lien (section CS 507.2). The obligor arranges to sell the property, and the buyer or another entity involved in the sale discovers the lien and diverts some or all of the proceeds from the sale to the CSED in exchange for release of the lien. In this situation seizure of the property is not required.

EXAMPLES: Real property (the title insurance company pays the CSED directly); automobile (the financial institution making the loan to the purchaser pays the CSED directly).

(Technically, the CSED could convert this property to cash at any time by issuing a warrant for distraint. In practice, however, the CSED chooses to rely on the more passive use of the lien, which produces a collection only in the event of a voluntary sale.)

Distribution of Proceeds. After seizing the property the sheriff or levying officer will, if necessary, conduct a sale. Proceeds of the seizure or sale are used to pay for the costs incurred by the sheriff or levying officer, any superior liens, and then the support lien or other money obligation. Remaining funds must be used to satisfy inferior liens, and any excess must be returned to the obligor. Consequently, care must be taken in determining which assets should be seized and sold. The anticipated sale price should be great enough to cover the costs involved in the seizure, to pay off any existing superior liens, and then to pay the support lien in whole or in substantial part.

Adjudicated Debts Only. Unlike the writ of execution (see section CS 504.1) the warrant for distraint is available only to enforce adjudicated debts, including interest and fees. Adjudicated debts, for purposes of this section, are sum certain amounts (1) contained in a final decision entered by the CSED in a contested case, (2) contained in a foreign support order confirmed in a CSED or Montana district court registration proceeding, or (3) contained in a Montana district court judgment. (Technically, the CSED can also use the warrant for distraint to collect current support obligations from the obligor's payor, but does not do so, preferring to rely on the more efficient remedy of administrative income withholding for this purpose.)

Requirements for Notice and Hearing. Montana law requires the CSED to provide notice and opportunity for hearing to an obligor whose property is seized by warrant for distraint. The law allows the CSED to limit the hearing to the issue of whether the obligor's property is exempt from execution. CSED has expanded the issues determined at hearing to also include, upon request, (1) whether the amount of the warrant includes any unadjudicated debt or (2) whether the amount of the warrant omits payments made since the last adjudication.

Notice is contained in the warrant for distraint itself. The sheriff or levying officer sends a copy of the warrant/notice to the obligor promptly after seizure. The obligor has 10 working days from the date the warrant/notice is mailed to request a hearing with the CSED.

Notice to Property Holder. At the time of seizure the CSED also notifies the property holder of the specific exemptions allowed for net earnings of the obligor. This notification is required by law for a writ of execution; the CSED includes it with the warrant for distraint to keep the two processes parallel, and to afford additional due process to the obligor.

Privacy Protection. Where the property to be seized is located in the obligor's residence, or in any other area determined by the sheriff or levying officer to be subject to a reasonable expectation of privacy, the CSED must seek a warrant of execution from the court before proceeding against the property. The judge can issue a warrant of execution upon determining there is reasonable cause to enter, and to levy upon property in, an area otherwise protected by the obligor's right of privacy. "Reasonable cause" generally requires a showing that there is no other property of the obligor's available for levy and execution.

As a matter of policy the CSED does not proceed against property located in the obligor's private residence. In cases involving personal property located outside of the obligor's residence, the CSED proceeds only if it believes the right of privacy does not apply. Only in extremely rare situations, where the facts of the case appear to justify the additional proofs and actions required, will the CSED consider an exception to this policy. **In all cases involving possible privacy protections, consultation with and approval of the CSED staff attorney is absolutely required.**

Prevention of Forced Sale. An obligor or other party having an interest in the property may prevent a sale of the seized property at any time prior to the sale. To prevent a scheduled sale, the obligor or other party must pay the CSED the full amount of the support lien, plus any costs incurred by the sheriff or levying officer in serving the warrant.

Redemption of Real Property after Forced Sale. Montana law at MCA § 25-13-801 et seq. extends special protection to the owner of real property which has been sold to satisfy a judgment or support lien. An obligor or another party with an interest in the property may **redeem** the parcel by buying it from the purchaser. Redemption must take place within 240 days of the date of the sheriff or levying officer's sale.

Redemptions may affect CSED operations when real property is sold at a sheriff's sale to satisfy a lien.

Redemption means to repurchase or buy back. A judgment debtor may redeem real property which was sold by the sheriff or levying officer in order to satisfy a judgment debt or support lien.

Example: An obligor owes a judgment to CSED for $10,000. The CSED owns the only lien on the obligor's home and forces execution and sale of it. A third party buys the home and CSED gets paid from the proceeds. Then, the obligor may "redeem" the home within

240 days by paying the redemption amount (which is calculated according to statute). If the obligor redeems the home, the obligor now owns it, and the third party gets his or her investment plus a statutory fee from the obligor.

If there is more than one lien on a piece of property, the sheriff's sale and redemption procedure is more complex. If the child support lien is not a first priority lien, the sheriff's sale may not yield enough money to pay the first liens and also the child support liens. However, if the obligor redeems the property after the sheriff's sale, the CSED may then get the value of its lien.

The number of persons who may redeem real property are limited. These persons are called "redemptioners". The following people may be redemptioners under MCA section 25-13-801:

1. the obligor;
2. the obligor's spouse;
3. the obligor's successor in interest (may be a shareholder of a corporation); or
4. a judgment creditor.

The CSED does not generally take advantage of its role as a redemptioner, because the CSED cannot benefit from the ownership of property. Therefore, this procedure section does not explain the method for redeeming property.

NOTE: If property is redeemed, the CSED probably will receive no notice of the redemption unless the redemption satisfies an existing child support lien. If it does satisfy an existing child support lien, the CSED will know that a redemption has occurred because the CSED will receive a check for the amount of the lien. If you believe that a redemption has occurred, consult your CSED staff attorney.

PROCEDURES

To execute support liens or to enforce support obligations.

"SHERIFF" DEFINED: The term "sheriff" as used in these PROCEDURES means the county sheriff or any other levying officer.

PLEASE NOTE: The following PROCEDURES contain steps taken by the sheriff as the CSED understands them. These steps are included for purposes of context only, and do not assert or require the stated actions. **The CSED's policies and procedures are not binding on the sheriff's office or any other external agency**.

Caseworker

1. Upon identifying property held by another party, or by the obligor's business, that is due, owing, or belonging to the obligor, determines whether the case is suitable for enforcement by warrant for distraint. If so, identifies the county where the property is

located, and proceeds to step 2. In questionable cases consults the CSED staff attorney.

NOTE 1: Obligor in Personal Possession. In very unusual situations these procedures may also apply for property held directly (i.e., not through a business) by the obligor. Consult the CSED staff attorney if it appears action may be appropriate.

NOTE 2: Suitable Cases. For purposes of these PROCEDURES a case is "suitable" when all of the following conditions apply:

(1) A warrant for distraint is required to ensure the collection (see POLICY, Use of the Warrant for Distraint: Administrative Options, this section).

(2) The case meets all of the conditions for an "appropriate case" in section CS 507.1, Support Liens--Overview, relating to the support order, the delinquency, and the applicability of income withholding or other enforcement remedies.

(3) The amount to be included in the warrant meets the conditions given in POLICY, Adjudicated Debts Only, this section.

(4) The value of the property is high enough to cover costs and other claims in addition to satisfying the support lien (see POLICY, Distribution of Proceeds, this section).

NOTE 3: Non-Cash Assets. If the property is a non-cash asset, the caseworker should work with the CSED staff attorney to determine whether to proceed against the property. If a seizure action is indicated, the caseworker must continue to work with the attorney to coordinate actions by the CSED, the sheriff, and others for successful seizure, maintenance, sale, and distribution of proceeds.

2. Prepares a Warrant for Distraint package containing the following documents:

(1) Form CS-507.3A, Warrant for Distraint (original)--directing the sheriff of the county where the property is located to levy against the property described in the warrant, and to return service and any proceeds to the CSED.

The Warrant for Distraint also contains a Notice of Seizure and Right to Claim Exemptions addressed to the obligor. This notice informs the obligor of his or her right to claim exemptions in the property seized under the warrant, and provides a Request for Exemption Hearing for that purpose.

(2) Form CS-507.3B, Sheriff's Praecipe for Warrant for Distraint (original)--giving the exact location of the property to be seized, alerting the sheriff to the 1999 requirements for seizure by warrant for distraint, and providing a checklist of the steps the sheriff must take to execute the warrant.

(3) Form CS-507.3C, Notice of Levy and Exemptions (original)--notifying the property holder on whom the warrant is served of the levy against the obligor, directing the property holder to transfer the property to the sheriff, and describing the statutory exemptions for earned income.

(4) If applicable, additional documents required by the sheriff's office for execution of a warrant, or required in connection with the seizure and sale of a non-cash asset.

EXAMPLES: Answer to Garnishment; arrangements for sheriff's sale; agreements for costs of maintaining property before sale; notice to holders of superior claims.

Consult your CSED staff attorney or paralegal to determine which of the above documents may apply.

(5) Pre-addressed stamped envelopes--for the sheriff's mailings to the obligor and the CSED.

Signs the sheriff's praecipe, makes a copy of the complete package for the case file, and mails the package to the Office of the Administrative Law Judge.

Office of the Administrative Law Judge (OALJ)

3. Upon receipt of a warrant package prepared in step 2, reviews the package for completeness and obtains the signature and seal of the Administrative Law Judge (ALJ) on the Warrant for Distraint. Conforms three copies of the warrant.

   Assembles and mails the warrant package to the appropriate sheriff, retaining one complete copy for the case file. The sheriff's package must contain the original warrant and two conformed copies, and items (2) through (5) from step 2 above.

   Sends the remaining conformed copy to the caseworker, and enters a SEARCHS case note for the warrant for distraint issued and sent to the sheriff.

Caseworker

4. Responds to contingencies in the seizure process as described in 4a and 4b below.

   a. If notified by the sheriff that a warrant of execution is required for the property in question, consults with the CSED staff attorney to determine whether continued enforcement against the property is advisable in the case. If so, works with the staff attorney to take appropriate action (see POLICY).

   b. If at any time before the warrant is executed or before the proceeds are delivered the CSED receives payment in full of the warrant amount (as a result of other enforcement actions), works with the CSED staff attorney to recall or release the warrant.

Sheriff

5. Within 90 calendar days after the date of issuance, serves the warrant and the notice of levy on the property holder, and seizes the property or arranges for transfer of the property to the sheriff's control or possession.

   NOTE: Service Procedures. The sheriff "serves" the warrant on the property holder by personally presenting, but retaining possession of, the original (issued) warrant, and furnishing a conformed copy of the warrant for the property holder to keep. The sheriff "serves" the notice of levy by personally delivering the original document.

6. Within 5 days after execution of the warrant, completes the certificate of mailing in both the original and the remaining conformed copy of the Warrant for Distraint. Sends the signed conformed copy of the warrant to the obligor by regular mail.

   Monitors for notification of a hearing request (see NOTE below) within 10 working days plus 3 mailing days after the date entered in the certificate of mailing.

   a. If notification of a hearing request is timely received, takes no action against the property until notified of the CSED's determination; then proceeds to step 15.

   b. If notification of a hearing request is not timely received, proceeds immediately to step 15.

   NOTE: Response Requirements. The obligor may respond to the Notice of Seizure and Right to Claim Exemptions by requesting an exemption hearing with the CSED within 10 working days of the date the sheriff mailed the warrant containing the notice. The obligor must mail a copy of the request to the sheriff on the same date the obligor submits the request to the CSED.

NOTE: The time frames for CSED actions in steps 7 through 10 below are established as processing guidelines only. They are not required by statute, but reflect the CSED's efforts to afford the obligor, whenever possible, the same speedy resolution as in exemption hearings in district court.

OALJ

7. Upon receipt of a request for an exemption hearing, enters a SEARCHS case note for the hearing requested, and immediately takes the following actions:

   a. Submits the request to the ALJ for a determination to grant or deny.

   b. Faxes a copy of the request to the caseworker.

Expedites the processing in this and subsequent steps to ensure that a hearing, if granted, is conducted within the time frame described in step 10.

ALJ

8. Within 24 hours of receiving a request in step 7, makes a determination as follows:

   If the request for exemption hearing was received by the OALJ within 10 working days after the date entered in the certificate of mailing by the sheriff, **and** the request contains one of the reasons in (1) through (3) below, grants the hearing; otherwise, denies the hearing:

   (1) To claim an exemption in the seized property
   (2) To contest the amount of the warrant, claiming it includes unadjudicated amounts
   (3) To contest the amount of the warrant, claiming payments were made since the last adjudication.

Caseworker

9. Upon receiving a copy of a request for an exemption hearing from the OALJ in step 7, proceeds in steps 9a and 9b below.

   a. Within 24 hours, informs the OALJ of any dates the caseworker will **not** be available for hearing.

   b. If appropriate, immediately contacts the obligor to attempt to resolve the issue; if an exemption in the property, an error in the CSED's debt amount, or some other reason not to execute on the property is discovered, takes appropriate steps to correct the pending action. In questionable cases, works with the CSED staff attorney. If necessary, explains the process for formally withdrawing the hearing request to the obligor.

OALJ

10. Within 24 hours after receiving the request in step 7, processes the hearing request as follows:

   a. If the hearing is granted, prepares and obtains the ALJ's signature on a Notice and Order for Exemption Hearing granting the hearing and setting a hearing date within 10 working days after the notice and order issue date. Sends copies of the order to the parties, the obligee, and the sheriff.

      The order should also provide instructions for telephone hearings; give the requirements for exhibits, subpoenas, and discovery; inform the obligee he or she may attend the hearing to observe as a non-party; and direct the sheriff to hold any seized property pending the outcome of the hearing.

b. If the hearing is denied, prepares and obtains the ALJ's signature on an order denying the hearing, giving the reason, and notifying the obligor of the opportunity for judicial review. Sends copies of the order to the parties and the sheriff.

Caseworker

11. Upon receiving a Notice and Order for Exemption Hearing works with the CSED staff attorney to prepare the case. Presents the CSED's case at hearing, and proceeds to step 14.

ALJ

12. Conducts the exemption hearing and determines the exemption claim or the support amount due, as applicable.

    Issues a decision and order containing the determination, specifying the amount of any exemption and the amount due the CSED under the warrant, and notifying the parties of the opportunity for judicial review.

OALJ

13. Obtains the ALJ's signature on the decision and order, and sends copies to the parties, the obligee, and the sheriff. Enters the appropriate SEARCHS case notes for the hearing held and the decision and order issued and mailed.

Caseworker

14. Upon receipt of the exemption hearing decision and order, enters the appropriate SEARCHS case note and proceeds to step 17.

Sheriff

15. Determines whether the gross proceeds expected from the seizure (and sale if necessary) of the property exceed the total of any superior liens, sheriff's fees, and exemptions.

    a. If so, sells the property (if necessary), and distributes the proceeds as required to satisfy the applicable liens, fees, exemptions, and CSED judgment; distributes any excess proceeds to the obligor.

    b. If not, returns the property to the obligor.

16. Completes the warrant for distraint process by preparing and sending to the CSED

- a return-of-service document listing the date and method of service of the warrant and any accompanying notice of levy, and the amount of any proceeds payable to the CSED;

- a check for the amount of the net proceeds, if any, up to the amount of the warrant;

- the original (issued) warrant for distraint, showing the date the warrant was mailed to the obligor;

- any additional documents as appropriate (for example, an Answer to Garnishment from a third party).

  NOTE: Continuing Levy. If the proceeds do not satisfy the full amount of the warrant, and if additional levies may be practical, the sheriff may retain the original warrant and seize additional amounts that become available within the 90 days before the warrant expires.

Caseworker

17. Upon receipt of the sheriff's return of service, enters the appropriate SEARCHS case notes for the warrant served, the copy mailed to the obligor, and the service returned.

    When the opportunity to request a hearing has passed, or when an order is received from the OALJ denying a hearing or entering a hearing decision and order, immediately arranges for distribution of any proceeds as described in steps 17a through 17c below.

    a. Copies the check, sends the original to TAPP with the appropriate "back-up" documentation (or notation on the check) identifying the pay source (warrant for distraint) and the obligor (SEARCHS participant identification number); retains a copy for the case file.

    b. In cases involving multiple obligees or other special distribution requirements (for example, the obligor's debt on SEARCHS includes amounts not yet adjudicated), prepares a Manual Payment Instruction (MPI) to supplement the information submitted with the check, and enters the MPI on SEARCHS. (At its option, a region may choose to enter an MPI for every case involving warrant proceeds; however, this is not required in most cases.)

    c. Informs the Regional Manager of receipt of the proceeds and of the net dollar amount, for lump-sum collections tracking purposes.

18. Makes a copy of the original, issued Warrant for Distraint (with the sheriff's certificate of mailing completed) and the sheriff's return of service for the case file, sends the

originals to the OALJ for filing, and enters a SEARCHS case note for the returned warrant sent to the OALJ.

19. If prior to issuance of the Warrant for Distraint the CSED perfected a support lien on the subject property, and the lien amount has been decreased by the proceeds from the seizure or by the decision and order in step 12, follows the procedures for release of lien or partial release of lien in section CS 507.4.

OALJ

20. Upon receiving the returned warrant and sheriff's return from the caseworker, files the documents and enters a SEARCHS case note for the returned warrant filed.

ENFORCING A SUPPORT ORDER
Releasing a Support Lien

CS 507.4

SUPERSEDES
CS 507.4, Releasing a Support Lien, March 25, 1996

REFERENCES
45 CFR § 303.103; MCA §§ 40-5-185, 40-5-227, 40-5-248, 40-5-271, 25-13-6

INTRODUCTION
Whenever enforcement of a support lien results in the full collection of the amount due under the lien, the lien must be released. By releasing the lien, the CSED terminates the encumbrance on the property, allowing it to pass freely. With real property, a lien release clears the title, and allows a title insurance company to issue a warranty deed. Failure of a creditor to file satisfaction of judgment, or to release liens placed on real property may result in liability for slander of title.

Real property liens may be fully released, which releases **all** of an obligor's real property in a county, or may be partially released, which releases a specific parcel of real property. To do a partial release, you **must** have the legal description of the particular parcel.

Generally, personal property liens are item-specific. Thus, when one item is released, it is fully released. There may be times when only a portion of a personal property item should be released. Please consult your regional CSED staff attorney for appropriate forms.

POLICY
Required Release. The CSED **must** release a support lien when enforcement of the lien results in the full collection of the amount due under the lien, or when the case is being closed.

Also, upon request by an appropriate party, the CSED must partially release a support lien when the lien includes "excess property;" excess property is property that
- is separable from the rest of the property subject to the lien, and
- is no longer needed to enforce the full amount owed by the obligor. **(CAUTION: This condition applies only when the value of the remaining, unreleased property is sufficient to cover the value of the original lien, less any collections, plus any additional support debt accrued since the lien was perfected.)**

Excess property may come about when collection in the case decreases the amount the obligor owes, or when the subject property becomes divisible--or a dollar value is identified--after the lien is perfected.

NOTE: Unrequested Partial Release. Where there is no request to partially release a lien, the CSED generally retains its lien against any excess property identified, to cover any future support debt accrued before the lien is finally enforced.

Discretionary Release. The CSED **may** release a support lien in an open case before it collects the full amount due under the lien, but will do so **only** if one of the following conditions applies:

(1) The CSED determines the lien is unenforceable.

NOTE: Repossessed Vehicles. In the case of a vehicle that is repossessed by a lender holding a superior lien, the CSED will release its lien if it does not expect the sale of the vehicle to produce sufficient funds to cover the superior lien(s) plus payment toward the support lien. This information can be requested from the superior lienholder.

(2) There is good reason to believe release of the lien will facilitate collection of the support arrearage.

NOTE: Subordination of Lien. Instead of releasing a lien, the CSED may agree to **subordinate** its lien on a property (that is, to accept a lower priority as a lienholder) if this action will facilitate collection of the support arrearage. (For example, in a situation where an obligor arranges refinancing to avoid foreclosure, and the new financing company demands first place as lienholder in order to agree to the arrangement, the CSED may agree to subordinate its interest to keep the property from being lost to the CSED altogether.) Consult the CSED staff attorney for preparation or review of any subordination agreement.

(3) The CSED agrees to give up some or all of its claim on the property to allow payment to other lienholders in the action (for example, in an insurance settlement the CSED may agree to release amounts for medical and attorney fees). A release in this situation must include special terms clearly retaining any portion of the lien not released in the agreement.

(4) In the case of a motor vehicle (defined as any item for which the Department of Justice issues a certificate of ownership), the CSED receives either of the following:

(a) A request for release of lien from an automobile dealer (or from the financing agency having an interest in the status of the vehicle title), in which the requestor proves the dealer purchased the vehicle from the obligor in good faith. Good-faith purchase is presumed if, at the time of the transaction, the dealer consulted the MVD's latest list of support liens and found there to be no support liens filed against the vehicle. The request for release must be submitted on the CSED's form or its equivalent, and must contain a verifiable statement of good-faith purchase.

(b) Payment of an amount pre-approved by the CSED for release of the lien, where the payor is the lender for the purchase of the vehicle. In this situation the seller (obligor) has agreed to accept the agreed purchase price less an amount to be paid directly to the CSED, in return for the ability to sell the vehicle. The lender's request for release of lien contains the particulars of the agreement and the date of the distribution to the CSED. The request must be submitted on the CSED's form or its equivalent, and must contain the signed agreements of the CSED investigator, the seller, and the lender.

The CSED will grant all requests to release vehicle liens where the conditions in (a) or (b) above apply.

Any decision to issue a discretionary release in (1) through (4) above requires a thorough examination of the individual facts and circumstances of the case.

PROCEDURE

To partially or fully release liens asserted against property of an obligor.

Caseworker

1. REAL PROPERTY: FULL RELEASE OF LIEN -- Upon identifying a case where a support lien is fully satisfied, or is no longer appropriate (see POLICY), takes action as follows:

   a) Completes form CS-507.4A, "Full Release of Support Lien", but does not sign. Doc Gen will automatically generate the Clerk of Court praecipe(s) (CS-503.7A) for filing the executed release in the existing cause number in each Montana county in which a lien was perfected against an obligor's real property.

   b) Submits to CSED staff attorney for approval.

   c) Upon approval by staff attorney forwards to the office of the ALJ for execution. Makes appropriate entry to SEARCHS.

Administrative Law Judge

   d) Reviews and signs "Full Release of Support Lien." Forwards to hearing assistant.

Hearings Assistant

   e) Makes four copies of the original. Retains one copy for the support lien registry. Mails one copy to the obligor, one copy to the obligee, and one copy to caseworker. In appropriate cases it may also be necessary to send a copy to the new owner of the property.

   f) Mails original "Full Release of Support Lien, " and the Clerk of Court praecipe to district court(s).

   g) Makes appropriate entry on the SEARCHS LIN screen.

Caseworker

2. REAL PROPERTY: PARTIAL RELEASE OF LIEN -- Upon identifying a case where a partial release of support lien applies (see POLICY)), takes action as follows:

   a) Completes form CS-507.4B, "Partial Release of Support Lien", but does not sign. Doc Gen automatically generates the Clerk of Court praecipe (CS-503.7A) for filing the executed release in the existing cause number in the Montana county in which a lien was perfected against identified real property belonging to an obligor's real property.

   b) Submits to CSED staff attorney for approval.

   c) Upon approval by staff attorney forwards to the office of the ALJ for execution. Makes appropriate entry to SEARCHS.

Administrative Law Judge

   d) Reviews and signs "Partial Release of Support Lien." Forwards to hearing assistant.

Hearings Assistant

   e) Makes four copies of the original. Retains one copy for the support lien registry. Mails one copy to the obligor, one copy to the obligee, and one copy to caseworker. In appropriate cases it may also be necessary to send a copy to the new owner of the property.

   f) Mails original "Partial Release of Support Lien", and the praecipe to district court.

   g) Makes appropriate entry on the SEARCHS LIN screen.

3. MOTOR VEHICLES, OR OTHER ITEMS FOR WHICH THE DEPARTMENT OF JUSTICE ISSUES A CERTIFICATE OF OWNERSHIP

CSED Central Office

   a) Distributes to appropriate parties, with instructions for use, samples of form CS-507.4D, Agreement to Distribution of Loan Proceeds and Release of Lien, and form CS-507.4E, Statement of Good-Faith Purchase and Request for Release of Lien.

Customer Service Unit

   b) Receives incoming calls relating to specific purchase of "liened" vehicle and takes action as follows:

- For transactions **in progress** at time of call, immediately transfers caller to region for response from caseworker.
- For transactions **not in progress** at time of call (ones that have already occurred, or that are intended but not in progress at that moment), takes message for caseworker according to usual procedures.

Caseworker

c) Upon identifying a case where a support lien is fully satisfied or is no longer appropriate (see POLICY), takes action beginning in step 3e below. Upon identifying a case where a release **may** apply based on a good-faith purchase, or on receipt of an agreed payment from a lender for a vehicle purchase, takes action beginning in step 3d below.

d) Upon being contacted by affected party, explains procedures for requesting release of lien and takes action in I) or ii) below as applicable.

i) Before purchase. If vehicle purchase involving lending institution is intended but has not yet occurred, takes necessary information on lender, purchaser, and agreed purchase price from contacting party (must be lender except in unusual situations). Determines payment amount required to release lien. (At discretion of caseworker, amount may be less than full lien amount if reduction will be beneficial to disposition of case.)

Completes form CS-507.4D, “Agreement to Distribution of Loan Proceeds and Release of Lien,” except for lender’s distribution date. Marks lines still to be completed (seller’s signature, distribution date, lender’s signature), signs form, enters SEARCHS case note, and mails original to lender. Enters appropriate SEARCHS case note and sets tickler for return of form.

Upon return of properly completed form from lender, checks for receipt of indicated payment; if payment received, proceeds to step 3e to release lien.

NOTE: “Before-Purchase” Form Appropriate for Lenders Only. The agreement form is designed for use when there is a direct cash loan for the purchase of the obligor’s vehicle. If a lender is not directly involved and the contacting party is a dealer, an individual purchaser, or the obligor, the obligor/seller must contact the CSED directly to discuss any release of the lien prior to sale.

ii) After Purchase. If vehicle purchase has already occurred, obtains necessary information from party requesting release (requestor must be either automobile dealer or financing agency--if purchaser is individual, refers matter to CSED staff attorney). Prepares form CS-507.4E, “Statement of Good-Faith Purchase and Request for Release of Lien,” and mails to requestor for completion. Enters appropriate SEARCHS case note and sets tickler for return of form.

Expedites following actions to comply with four-day turnaround (see step 3e) for release requests:

Upon receipt of completed form from automobile dealer (or from financing agency if that agency now has interest in status of title), reviews form for satisfaction of good-faith purchase requirement, and verifies by checking applicable MVD list. Upon verification, submits to team supervisor for approval; upon approval enters SEARCHS case note and proceeds to step 3e to release lien.

If investigation shows dealer should have been able to discover lien from MVD list, submits request to team supervisor with recommendation to deny. Upon approval to deny, enters SEARCHS case note and submits to CSED staff attorney for final approval. Upon final approval, and within four days after receiving request for release, works with attorney to send letter to requestor explaining reason for denial; enters SEARCHS case note. Takes no further action unless new information received.

e) Within four working days of receiving sufficient payment, or of receiving form in step 4d(ii) above, completes form CS-507.4C "Release of Support Lien," and submits to CSED staff attorney for expedited approval.

f) Immediately upon approval by staff attorney, proceeds in this step and in step 3g. Makes four copies of original. Retains one copy of original for file. Mails one copy to the obligor, one copy to the obligee, and one copy to the office of the ALJ for the support lien registry. Makes appropriate entry to SEARCHS. In appropriate cases it may also be necessary to send a copy to the new owner or other interested parties.

g) Mails original to Department of Justice, Motor Vehicles Division in Deer Lodge, Montana.

h) Makes appropriate entry on the SEARCHS LIN screen.

4. PERSONAL PROPERTY -- Upon identifying a case where a support lien is fully satisfied or is no longer appropriate, or where a partial release of the lien applies (see POLICY), takes action as follows:

   a) Completes form CS-507.4C "Release of Support Lien," modified as necessary if for partial release.

   b) Submits to CSED staff attorney for approval.

   c) Upon approval by staff attorney, makes four copies of original. Retains one copy for file. Mails one copy to obligor, one copy to obligee, and one copy to the office of the ALJ for the support lien registry. Makes appropriate entry to SEARCHS. In appropriate cases, it may also be necessary to send a copy to any new owner of the property, or to any third party in possession of the property who previously received a copy of the Notice of Lien.

SUPERSEDES

CS 507.5, "Lottery Liens," May 26, 1994.

REFERENCES

MCA § 23-7-312.

POLICY

Introduction. In 1993 the Montana Legislature created a process to allow the CSED to exert a lien over a child support debtor's lottery winnings. This lien is different from the child support lien discussed in section CS 507.1, Support Liens--Overview. Unlike other child support liens, the lottery lien does not require an adjudicated or sum-certain debt. Also, the debt owed need not be for "child support." For example, a repayment debt owed by an obligee can be collected by lottery lien enforcement. Any person who owes a debt to the CSED, or owes a debt that the CSED is collecting, may have lottery winnings intercepted under this process.

Liens Limited to Direct-Pay Winnings. The PROCEDURES in this section apply only to lottery winnings paid directly to the winner by the Montana Lottery (the Lottery). Winnings paid by the retailer that sold the lottery ticket are not subject to lien or seizure by the CSED. (Winning tickets under $250 (for "instant" games) or $600 (for "on-line" games) can be redeemed by the retailer; winning tickets of $250 or $600 (or more), respectively, must be presented directly to the Lottery--either in person or by mail--for payment.)

Interagency Agreement. To implement the statutory authority for seizing direct-pay winnings, the CSED and the Lottery entered into an Agreement standardizing lien operations. Under the Agreement the two agencies work together to identify child support debtors and to intercept direct payments to these debtors by creating, perfecting, and enforcing CSED liens within short time frames. The statute limits the CSED's opportunity to collect under this process to cases where (1) the winnings exceed $600, (2) the CSED perfects the necessary lien within a set amount of time after the winner is identified as a child support debtor, and (3) the CSED initiates an enforcement or "garnishment" action against the winnings within 30 days of perfecting the lien.

Debt Status: Criteria for Perfecting the Lien. The CSED may proceed to perfect a lien against lottery winnings (to prevent immediate payment to the debtor) only if the debt is either (1) reduced to a sum-certain (adjudicated) amount by judicial or administrative order, or (2) based on a Montana district court judgment. The judgment in (2) is created whenever an obligor subject to a support order issued or registered in Montana and abstracted to the district court fails to pay support as ordered.

Because the seizure instruments for lottery liens are case-specific (see Seizure Steps below), the CSED must perfect a separate lien for each case in which the debtor owes a debt.

Due Process Characteristics. The notice used to perfect a lien against the lottery winnings does not include an opportunity for hearing. However, the CSED issues a notice of seizure later in the enforcement process that informs the debtor of his or her right to request a hearing to claim an exemption in the property or, in the case of an adjudicated debt, to contest the unpaid amount of the debt. The hearing is held within a short time after the actual seizure. The debtor is informed in the notice of seizure that lottery winnings are not exempt from execution under Montana law.

Seizure Steps. Once the lien is perfected the CSED may seize the winnings by warrant for distraint or writ of execution, depending on the status of the debt (see PROCEDURES). The Lottery does not deliver the winnings, and the CSED does not collect them, by interagency "no-warrant transfer."

PROCEDURES

PLEASE NOTE: The following PROCEDURES include actions taken by the Montana Lottery. These actions represent only the CSED's general understanding of the Lottery's operations and are not intended to prescribe specific steps or policies for that agency.

SEARCHS

1. Monthly identifies cases meeting all of the following criteria:
   (1) There is a debt owed to or collected by the CSED; the debtor may be the obligor or the obligee.
   (2) The amount of the debt exceeds $20.
   (3) The case is not suppressed for federal tax offset.
   Produces a report to be delivered to the Montana Lottery (the Lottery) listing the name and social security number of the debtor in each identified case.

Montana Lottery (Lottery)

2. Prior to direct payment of any winnings in excess of $600, checks the most recent report provided by the CSED. If the winner owes a CSED debt, holds the payment and immediately
   - faxes a request for certification of the amount of the debt to the CSED central office, and
   - makes a reasonable attempt to notify the CSED central office by telephone.
   If the debtor is present in the Lottery office, advises the CSED of this fact in the faxed request.

CSED Administrative Support Unit

3. Upon receiving a request for certification from the Lottery in step 2, immediately informs the appropriate CSED regional office of the request, and forwards the request by fax to the region.

Caseworker

4. Upon receiving a request for certification from the Lottery, immediately checks the status and amount of the debt on SEARCHS, and proceeds in step 5 or 6 below
   - **within one hour** after the CSED received the request, if the debtor is present in the Lottery office, or
   - **within two working days** after the CSED received the request, if the debtor is not present in the Lottery office.

5. If there is no debt on SEARCHS for any of the debtor's unsuppressed accounts, prepares and faxes to the Lottery form CS-507.5C, Notice of Release of Lien Against Lottery Winnings. Sends the original by regular mail, retaining a copy for the case file.

   NOTE: Release of Lien with Debt Still Owing. In very unusual situations the CSED may elect to release a lien in a case with a remaining debt balance if doing so would be beneficial to the overall enforcement of the case, or for other compelling reasons. In the following examples release of lien **may** be appropriate, depending on other case facts and regional policy:

   (1) The winnings represent the debtor's only means of obtaining or regaining reliable transportation to a job, and there is evidence that income withholding from that job (for an amount toward the debt) would be successful.

   (2) The winnings represent the only opportunity for the debtor or the debtor's dependent to obtain needed but previously unaffordable medical treatment.

6. If there is a debt on SEARCHS for any of the debtor's unsuppressed accounts, proceeds in step 6a, 6b, or 6c as appropriate. (See Debt Status, POLICY, for definitions of adjudicated debt and district court judgment.) If the debtor has more than one case, issues a separate notice for each case.

   a. If the debt has been adjudicated, prepares and issues form CS-507.5A, Notice of Lien Against Lottery Winnings, for the amount of the adjudicated debt; faxes the notice to the Lottery within one hour (or two days--see step 4) after the CSED received the request for certification. Sends the original notice to the Lottery by regular mail, with a copy to the debtor; retains a copy for the case file. (For full or partial release of lien after the notice is issued, see step 7.)

      Enters a SEARCHS case note and sets a tickler for 20 calendar days after the date of the notice. Proceeds to enforce the lien according to instructions in section CS 507.3, Enforcing a Support Lien by Warrant for Distraint, and according to the instructions in step 10 below.

      > If the debtor is not the obligor in the case, changes "obligor" to "debtor" in the warrant for distraint documents, and adapts other terminology as necessary.

b. If the debt has not been adjudicated but is based on a Montana district court judgment, prepares and issues form CS-507.5A, Notice of Lien Against Lottery Winnings, for the amount of the judgment. (For uncertain amounts see the NOTE at the end of this substep (6b).)

Faxes the notice to the Lottery within one hour (or two days--see step 4) after the CSED received the request for certification. Sends the original notice to the Lottery by regular mail, with a copy to the debtor; retains a copy for the case file. (For full or partial release of lien after the notice is issued, see step 7.)

Enters a SEARCHS case note and sets a tickler for 20 calendar days after the date of the notice. Proceeds to enforce the judgment according to instructions in section CS 504.1, Writ of Execution, and according to the instructions in step 10 below.

NOTE: Uncertain Amounts. If the debt on SEARCHS includes (1) amounts not substantiated by CSED payment records (such as amounts from the obligee's affidavit), or (2) amounts involved in a pending (informal) CSED investigation, the caseworker must weigh the possible outcomes of asserting the whole debt versus the lesser amount. If certified amounts are later found to be incorrect, actions will be required to release the lien, recall the writ or warrant, refund the money, and/or pursue voluntary repayment with the obligee. (Note that the ability to release the lien in step 7 does not remove or relax the requirement for due diligence in certifying the debt.) Conversely, if uncertified amounts are later found to be correct, the CSED will have lost a chance to collect the debt.

c. If the debt has not been adjudicated and is not based on a Montana district court judgment, reviews the facts of the case and applies the following questions:

(1) Can the CSED obtain a Montana district court judgment by registering the foreign support order in Montana and abstracting the registered order to the district court?

(2) Do the amount of the potential collection and the enforcement status of the case justify the CSED effort required to register and abstract the order?

If the answer to both questions is "yes," proceeds to step 8. If the answer to either question is "no," proceeds as in step 5; also if applicable, contacts the debtor directly to discuss repayment of the debt, in light of the windfall he or she has just received.

In questionable cases consults the CSED staff attorney.

7. If after a lien is perfected but before winnings are seized (step 6) the CSED receives payment toward the debt by another collection method, or if some other reason arises for releasing part or all of the perfected lien, obtains the approval of the CSED staff

attorney for release of the appropriate amount. Upon approval, issues form CS-507.5C, Notice of Release of Lien Against Lottery Winnings; if applicable, adjusts the form to specify a partial release. Sends the original notice of release to the Lottery by regular mail, with a copy to the debtor; retains a copy for the case file, and enters a SEARCHS case note. If necessary, recalls or amends any seizure action already in progress.

8. Expedites the processing of a foreign support order according to the time frames in steps 8a through 8c below.

   a. **Concurrently** takes actions in substeps i through iii.

      i. Perfects the lien: Issues a Notice of Lien Against Lottery Winnings according to the procedures in step 6b.

      ii. Registers the foreign support order: Issues form CS-500.2C, Notice of Registration of Support Order for Enforcement, according to the procedures in section CS 500.2, Registration of Support Orders for Enforcement Only.

      iii. Initiates action in district court: Requests that the Office of the Administrative Law Judge (OALJ) abstract the registered order to the district court. (The court will assign a cause number and send the OALJ a certified copy of the filed abstract with the cause number.)

   b. Upon receipt of a cause number in step 8a(iii) above, proceeds as in step 6b; in a non-public assistance or interstate responding case returns to step 8c below for disbursement of the collection.

      CAUTION: It may take up to 2 weeks to abstract the order and obtain a cause number from the district court. Meanwhile, the Lottery can release the payment to the winner 30 days after receiving the CSED's notice of lien, if a seizure action is not initiated. Therefore, it is important that the caseworker proceed with the writ of execution as soon as the cause number is available.

   c. In a non-public assistance or interstate responding case, if the opportunity for or determination from a registration hearing is still pending, places a hold on the collection received from the writ of execution. Releases the collection for disbursement to the obligee only when the amount of the debt is confirmed in the registration process.

Lottery

9. Upon receiving a notice of lien issued in step 6, segregates and holds the required amount from the debtor's net winnings. (Net winnings are gross winnings less any state and federal taxes withheld according to Lottery policy.) Pays the segregated amount to the sheriff or other levying officer at the time of execution.

Caseworker

10. If informed of an actual seizure (by the sheriff or other levying officer directly, or by receipt of the returned service) within 20 days after the notice of lien was issued, enters a SEARCHS case note and processes the return of service. Returns to step 8c if applicable.

    If not informed of an actual seizure within 20 days, contacts the Lottery to determine the status of the seizure action. If the sheriff or other levying officer has not yet executed the writ or warrant, asks the Lottery to continue to hold the winnings until seizure occurs; sends the Lottery an informational copy of the issued writ or warrant, showing action has been initiated.

    Contacts the sheriff or other levying officer as necessary to confirm the officer intends to seize the winnings in the near future. In cases where delay in execution may result in loss of collection, consults the CSED staff attorney to identify possible courses of action.

    NOTE: Return-of-Proceeds Time Frames Not Affected. Once the sheriff or levying officer has seized the winnings, the collection is secured; the officer may hold the proceeds for the maximum time allowed by law before making the return to the CSED, as in all other (non-lottery) seizure actions.

Lottery

11. Upon receipt of a CSED notice of release of lien, or upon failure of the CSED to initiate a seizure action within 30 days after issuing a notice of lien, releases the payment to the winner in accordance with Lottery policy.

SUPERSEDES

CS 507.5, "Lottery Liens," May 26, 1994.

REFERENCES

MCA § 23-7-312.

POLICY

Introduction. In 1993 the Montana Legislature created a process to allow the CSED to exert a lien over a child support debtor's lottery winnings. This lien is different from the child support lien discussed in section CS 507.1, Support Liens--Overview. Unlike other child support liens, the lottery lien does not require an adjudicated or sum-certain debt. Also, the debt owed need not be for "child support." For example, a repayment debt owed by an obligee can be collected by lottery lien enforcement. Any person who owes a debt to the CSED, or owes a debt that the CSED is collecting, may have lottery winnings intercepted under this process.

Liens Limited to Direct-Pay Winnings. The PROCEDURES in this section apply only to lottery winnings paid directly to the winner by the Montana Lottery (the Lottery). Winnings paid by the retailer that sold the lottery ticket are not subject to lien or seizure by the CSED. (Winning tickets under $250 (for "instant" games) or $600 (for "on-line" games) can be redeemed by the retailer; winning tickets of $250 or $600 (or more), respectively, must be presented directly to the Lottery--either in person or by mail--for payment.)

Interagency Agreement. To implement the statutory authority for seizing direct-pay winnings, the CSED and the Lottery entered into an Agreement standardizing lien operations. Under the Agreement the two agencies work together to identify child support debtors and to intercept direct payments to these debtors by creating, perfecting, and enforcing CSED liens within short time frames. The statute limits the CSED's opportunity to collect under this process to cases where (1) the winnings exceed $600, (2) the CSED perfects the necessary lien within a set amount of time after the winner is identified as a child support debtor, and (3) the CSED initiates an enforcement or "garnishment" action against the winnings within 30 days of perfecting the lien.

Debt Status: Criteria for Perfecting the Lien. The CSED may proceed to perfect a lien against lottery winnings (to prevent immediate payment to the debtor) only if the debt is either (1) reduced to a sum-certain (adjudicated) amount by judicial or administrative order, or (2) based on a Montana district court judgment. The judgment in (2) is created whenever an obligor subject to a support order issued or registered in Montana and abstracted to the district court fails to pay support as ordered.

Because the seizure instruments for lottery liens are case-specific (see Seizure Steps below), the CSED must perfect a separate lien for each case in which the debtor owes a debt.

Due Process Characteristics. The notice used to perfect a lien against the lottery winnings does not include an opportunity for hearing. However, the CSED issues a notice of seizure later in the enforcement process that informs the debtor of his or her right to request a hearing to claim an exemption in the property or, in the case of an adjudicated debt, to contest the unpaid amount of the debt. The hearing is held within a short time after the actual seizure. The debtor is informed in the notice of seizure that lottery winnings are not exempt from execution under Montana law.

Seizure Steps. Once the lien is perfected the CSED may seize the winnings by warrant for distraint or writ of execution, depending on the status of the debt (see PROCEDURES). The Lottery does not deliver the winnings, and the CSED does not collect them, by interagency "no-warrant transfer."

PROCEDURES

PLEASE NOTE: The following PROCEDURES include actions taken by the Montana Lottery. These actions represent only the CSED's general understanding of the Lottery's operations and are not intended to prescribe specific steps or policies for that agency.

SEARCHS

1. Monthly identifies cases meeting all of the following criteria:
   (1) There is a debt owed to or collected by the CSED; the debtor may be the obligor or the obligee.
   (2) The amount of the debt exceeds $20.
   (3) The case is not suppressed for federal tax offset.
   Produces a report to be delivered to the Montana Lottery (the Lottery) listing the name and social security number of the debtor in each identified case.

Montana Lottery (Lottery)

2. Prior to direct payment of any winnings in excess of $600, checks the most recent report provided by the CSED. If the winner owes a CSED debt, holds the payment and immediately
   - faxes a request for certification of the amount of the debt to the CSED central office, and
   - makes a reasonable attempt to notify the CSED central office by telephone.
   If the debtor is present in the Lottery office, advises the CSED of this fact in the faxed request.

CSED Administrative Support Unit

3. Upon receiving a request for certification from the Lottery in step 2, immediately informs the appropriate CSED regional office of the request, and forwards the request by fax to the region.

Caseworker

4. Upon receiving a request for certification from the Lottery, immediately checks the status and amount of the debt on SEARCHS, and proceeds in step 5 or 6 below
   - **within one hour** after the CSED received the request, if the debtor is present in the Lottery office, or
   - **within two working days** after the CSED received the request, if the debtor is not present in the Lottery office.

5. If there is no debt on SEARCHS for any of the debtor's unsuppressed accounts, prepares and faxes to the Lottery form CS-507.5C, Notice of Release of Lien Against Lottery Winnings. Sends the original by regular mail, retaining a copy for the case file.

   NOTE: Release of Lien with Debt Still Owing. In very unusual situations the CSED may elect to release a lien in a case with a remaining debt balance if doing so would be beneficial to the overall enforcement of the case, or for other compelling reasons. In the following examples release of lien **may** be appropriate, depending on other case facts and regional policy:

   (1) The winnings represent the debtor's only means of obtaining or regaining reliable transportation to a job, and there is evidence that income withholding from that job (for an amount toward the debt) would be successful.

   (2) The winnings represent the only opportunity for the debtor or the debtor's dependent to obtain needed but previously unaffordable medical treatment.

6. If there is a debt on SEARCHS for any of the debtor's unsuppressed accounts, proceeds in step 6a, 6b, or 6c as appropriate. (See Debt Status, POLICY, for definitions of adjudicated debt and district court judgment.) If the debtor has more than one case, issues a separate notice for each case.

   a. If the debt has been adjudicated, prepares and issues form CS-507.5A, Notice of Lien Against Lottery Winnings, for the amount of the adjudicated debt; faxes the notice to the Lottery within one hour (or two days--see step 4) after the CSED received the request for certification. Sends the original notice to the Lottery by regular mail, with a copy to the debtor; retains a copy for the case file. (For full or partial release of lien after the notice is issued, see step 7.)

      Enters a SEARCHS case note and sets a tickler for 20 calendar days after the date of the notice. Proceeds to enforce the lien according to instructions in section CS 507.3, Enforcing a Support Lien by Warrant for Distraint, and according to the instructions in step 10 below.

      > If the debtor is not the obligor in the case, changes "obligor" to "debtor" in the warrant for distraint documents, and adapts other terminology as necessary.

b. If the debt has not been adjudicated but is based on a Montana district court judgment, prepares and issues form CS-507.5A, Notice of Lien Against Lottery Winnings, for the amount of the judgment. (For uncertain amounts see the NOTE at the end of this substep (6b).)

Faxes the notice to the Lottery within one hour (or two days--see step 4) after the CSED received the request for certification. Sends the original notice to the Lottery by regular mail, with a copy to the debtor; retains a copy for the case file. (For full or partial release of lien after the notice is issued, see step 7.)

Enters a SEARCHS case note and sets a tickler for 20 calendar days after the date of the notice. Proceeds to enforce the judgment according to instructions in section CS 504.1, Writ of Execution, and according to the instructions in step 10 below.

NOTE: Uncertain Amounts. If the debt on SEARCHS includes (1) amounts not substantiated by CSED payment records (such as amounts from the obligee's affidavit), or (2) amounts involved in a pending (informal) CSED investigation, the caseworker must weigh the possible outcomes of asserting the whole debt versus the lesser amount. If certified amounts are later found to be incorrect, actions will be required to release the lien, recall the writ or warrant, refund the money, and/or pursue voluntary repayment with the obligee. (Note that the ability to release the lien in step 7 does not remove or relax the requirement for due diligence in certifying the debt.) Conversely, if uncertified amounts are later found to be correct, the CSED will have lost a chance to collect the debt.

c. If the debt has not been adjudicated and is not based on a Montana district court judgment, reviews the facts of the case and applies the following questions:

(1) Can the CSED obtain a Montana district court judgment by registering the foreign support order in Montana and abstracting the registered order to the district court?

(2) Do the amount of the potential collection and the enforcement status of the case justify the CSED effort required to register and abstract the order?

If the answer to both questions is "yes," proceeds to step 8. If the answer to either question is "no," proceeds as in step 5; also if applicable, contacts the debtor directly to discuss repayment of the debt, in light of the windfall he or she has just received.

In questionable cases consults the CSED staff attorney.

7. If after a lien is perfected but before winnings are seized (step 6) the CSED receives payment toward the debt by another collection method, or if some other reason arises for releasing part or all of the perfected lien, obtains the approval of the CSED staff

attorney for release of the appropriate amount. Upon approval, issues form CS-507.5C, Notice of Release of Lien Against Lottery Winnings; if applicable, adjusts the form to specify a partial release. Sends the original notice of release to the Lottery by regular mail, with a copy to the debtor; retains a copy for the case file, and enters a SEARCHS case note. If necessary, recalls or amends any seizure action already in progress.

8. Expedites the processing of a foreign support order according to the time frames in steps 8a through 8c below.

   a. **Concurrently** takes actions in substeps i through iii.

      i. Perfects the lien: Issues a Notice of Lien Against Lottery Winnings according to the procedures in step 6b.

      ii. Registers the foreign support order: Issues form CS-500.2C, Notice of Registration of Support Order for Enforcement, according to the procedures in section CS 500.2, Registration of Support Orders for Enforcement Only.

      iii. Initiates action in district court: Requests that the Office of the Administrative Law Judge (OALJ) abstract the registered order to the district court. (The court will assign a cause number and send the OALJ a certified copy of the filed abstract with the cause number.)

   b. Upon receipt of a cause number in step 8a(iii) above, proceeds as in step 6b; in a non-public assistance or interstate responding case returns to step 8c below for disbursement of the collection.

      CAUTION: It may take up to 2 weeks to abstract the order and obtain a cause number from the district court. Meanwhile, the Lottery can release the payment to the winner 30 days after receiving the CSED's notice of lien, if a seizure action is not initiated. Therefore, it is important that the caseworker proceed with the writ of execution as soon as the cause number is available.

   c. In a non-public assistance or interstate responding case, if the opportunity for or determination from a registration hearing is still pending, places a hold on the collection received from the writ of execution. Releases the collection for disbursement to the obligee only when the amount of the debt is confirmed in the registration process.

Lottery

9. Upon receiving a notice of lien issued in step 6, segregates and holds the required amount from the debtor's net winnings. (Net winnings are gross winnings less any state and federal taxes withheld according to Lottery policy.) Pays the segregated amount to the sheriff or other levying officer at the time of execution.

Caseworker

10. If informed of an actual seizure (by the sheriff or other levying officer directly, or by receipt of the returned service) within 20 days after the notice of lien was issued, enters a SEARCHS case note and processes the return of service. Returns to step 8c if applicable.

    If not informed of an actual seizure within 20 days, contacts the Lottery to determine the status of the seizure action. If the sheriff or other levying officer has not yet executed the writ or warrant, asks the Lottery to continue to hold the winnings until seizure occurs; sends the Lottery an informational copy of the issued writ or warrant, showing action has been initiated.

    Contacts the sheriff or other levying officer as necessary to confirm the officer intends to seize the winnings in the near future. In cases where delay in execution may result in loss of collection, consults the CSED staff attorney to identify possible courses of action.

    NOTE: Return-of-Proceeds Time Frames Not Affected. Once the sheriff or levying officer has seized the winnings, the collection is secured; the officer may hold the proceeds for the maximum time allowed by law before making the return to the CSED, as in all other (non-lottery) seizure actions.

Lottery

11. Upon receipt of a CSED notice of release of lien, or upon failure of the CSED to initiate a seizure action within 30 days after issuing a notice of lien, releases the payment to the winner in accordance with Lottery policy.

SUPERSEDES

CS 508.3, Collection by Federal Offset, January 1, 2003.

REFERENCES

45 CFR 303.72; OCSE-AT-99-14; OCSE Federal Offset Program User Guide, April 2001.

POLICY

Process Overview. As a IV-D agency the CSED enforces support arrears through a process known as "federal offset." Under this process the CSED submits cases with support arrears to the federal Office of Child Support Enforcement (OCSE), and OCSE forwards the cases to the proper agency or program for the following enforcement remedies:

- **Payment Offset.** The U.S. Department of the Treasury's Financial Management Service (FMS) intercepts federal payments to the obligor.
- **Passport Denial.** The U.S. Department of State (DoS) denies the obligor's application for a passport.
- **Multistate Financial Institution Data Match (MSFIDM).** The MSFIDM program identifies, and informs the CSED of, any accounts held by the obligor in multistate financial institutions.

This section concerns only payment offset. For information about passport denial and MSFIDM, see sections CS 508.7 and CS 500.3, respectively.

Payments Subject to Offset. FMS offsets federal income tax refunds and other federal "administrative" payments. The three types of administrative offsets are retirement pay, vendor/miscellaneous payments (for example, travel reimbursements), and salaries. States are required to participate in federal tax offset, but may opt out of any or all federal administrative offsets. The CSED has elected to participate fully in retirement and vendor payment offsets, but to opt out of federal salary offsets except in special cases.

Payments exempt from offset include certain benefits and assistance payments, and other payments exempted by federal law or by action of the Secretary of the Treasury. The complete list of exempt payments is given at the end of this section.

CSED Federal Offset History. Through 1998 the CSED submitted cases for federal offset only once a year. Between submissions arrears amounts could be decreased but not increased, and new cases could not be added. In 1999 the federal offset program began accepting submissions of all changes (new cases, arrears increases, and arrears decreases) on a continuing basis, and the CSED converted to a continuous process, submitting new and updated cases once a month, and certain special transactions weekly (as needed). For purposes of reconciliation the CSED also retained its annual process, submitting the entire federal offset-qualified caseload each fall.

Excluding Cases. Federal parameters allow states to exclude individual cases from tax offset, administrative offset, passport denial, MSFIDM, or combinations of these. States may exclude cases from all administrative offsets or from specific types (retirement, vendor/miscellaneous, or salary). The CSED automatically excludes a submitted case from tax offset if arrears are unassigned and there are no minor children. (This exclusion is based on federal eligibility requirements for submitted arrears. See POLICY, Identifying Cases to be Submitted.) The CSED does not automatically exclude cases from administrative offset, passport denial, or MSFIDM.

OCSE Exclusion for Federal Salary. OCSE automatically excludes all submitted cases from the specific remedy of federal salary offset. At the time of this writing OCSE had not yet implemented the federal salary remedy; when the remedy becomes available, OCSE will retain the "blanket" exclusion unless a state requests it be removed. The exclusion can be removed for all of a state's cases, or for individual cases. Montana plans to allow the blanket exclusion to remain in place, and to request individual removal (i.e., use of federal salary offset) only in special cases. Individual removals will be submitted to OCSE on line, using the same process as for on-line exclusions (see On-Line Exclusions below).

The purpose of participating in the general exclusion for federal salaries is to avoid overcollection in cases involving federal employers. New-hire reporting and income withholding are already producing appropriate collections from federal paychecks in most cases, including applicable payments to firefighters and Native Americans.

On-Line Exclusions. For an individual case and remedy not already excluded under the preceding paragraphs, the CSED can obtain an exclusion for one or more remedies by submitting the case on-line to OCSE using SimPC software. For example, SimPC may be used to exclude a case from passport denial, or from vendor payment offset, while maintaining the case with OCSE for all other remedies.

Access to the on-line exclusion process is limited to the CSED Federal Offset Specialist, and is not available at the caseworker level. Also, the process is not intended for broad application, but for special situations only, as coordination with SEARCHS batch processing can be difficult, and may require ongoing follow-up by the Federal Offset Specialist. A request for exclusion should be based on strict assessment of facts and circumstances in the particular case. For example, a vendor payment exclusion **may** be appropriate in a case where the obligor is receiving regular payments from a "vendor" source, and the payments are contractor payments subject to CSED income withholding, or travel reimbursements needed to directly sustain the obligor's income-earning ability.

The CSED can also use SimPC to submit other changes to existing cases (such as changes to the debt amount), or to submit new cases; however, this practice is limited to very specific or unusual circumstances.

Suppressing Cases. Caseworkers can prevent submission of a particular case by suppressing federal offset on SEARCHS. Suppression is different from a remedy-specific exclusion (see preceding paragraphs) in that a "suppressed" case is never submitted, so there is no choice of remedies to exclude or retain. CSED policy, based on requirements of federal and state law, limits the use of suppressions to cases where one or more of the following conditions apply; note that for some conditions suppression is absolutely required:

(1) A bankruptcy court or other tribunal of appropriate jurisdiction has imposed a stay on collection actions against the obligor's assets. SUPPRESSION REQUIRED.

(2) The arrears amount on SEARCHS is not reasonably certain, and submitting the amount to OCSE would likely result in an update to decrease the amount in a later submission. (For example, account adjustments may be pending; or there may be reason to believe the obligor will produce evidence of additional payments.)

(3) The obligor is receiving **retirement or vendor/miscellaneous** payments from a federal employer or payor, **and** the CSED is collecting under an income withholding order to that employer or payor, **and** maintaining the case for the purpose of other federal offset processes (such as tax offset and MSFIDM) would not be beneficial to enforcement of the case. (If other remedies were important based on the facts of the case, the CSED would use an exclusion for the federal retirement or vendor remedy rather than a suppression.)

(4) The assigned or unassigned arrears amount on SEARCHS has reached the federal offset threshhold (see Identifying Cases to be Submitted, below) only because arrears created by income withholding annualization are included in the amount. SUPPRESSION REQUIRED.

(5) In highly unusual situations, submission for federal offset would impair the CSED's overall ability to enforce the case (for example, there is a history of federal adjustments to collections, creating obligee accounts receivable).

Travel Reimbursement Payments. Unless special exclusion facts apply (see "Excluding Cases" above), federal travel reimbursement payments are considered eligible for federal offset. Generally, the remedy for the applicable payment source (usually vendor/miscellaneous) should not be excluded, nor should collections be refunded. CSED policy does exclude travel reimbursements from state offset, but this policy is based on considerations that do not apply to federal reimbursements.

Identifying Cases to be Submitted. Federal regulations establish criteria for determining whether a case is eligible for federal offset. In identifying cases to be submitted SEARCHS applies the following requirements:

(1) Case status: The case must be an open enforcement case that is not interstate responding, or an interstate responding case where the initiating "state" is a foreign country. (Note that a case may be eligible even if the obligor is in locate status.)
[At the time of this writing programming was in progress to identify for federal offset all cases referred to the CSED by foreign countries; until the programming is completed, the CSED will continue to identify these cases manually and to submit them individually via SimPC.]

(2) SSN status: There must be a social security number attached to the obligor on SEARCHS.

(3) Arrears: The case must have assigned or temporarily assigned arrears of at least $150, or unassigned arrears of at least $500. ("Assigned" means TANF or IV-E foster care, "unassigned" means non-TANF or Medicaid-only.) Assigned and unassigned arrears are treated as separate "cases" for purposes of federal offset.

NOTE: Combining Arrears. For purposes of identifying cases for submission, "arrears" may include child support, spousal support, cash medical support, or any combination of these. An obligor's assigned arrears are submitted for offset if total assigned arrears over all cases are $150 or more. Likewise, unassigned arrears are submitted if the total for all cases reaches $500. This results in at most two submitted federal offset "cases" for a given obligor. OCSE will further combine arrears by adding the assigned and unassigned amounts, to determine whether total arrears are more than $5,000; if so, the obligor also qualifies for passport denial.

(4) Child status: Unassigned arrears submitted for **tax** offset must be for a minor child. A minor child is either (a) a child who is not emancipated and who will not be emancipated by the end of the current tax year, or (b) a child who is emancipated in years but who is disabled according to the SEARCHS SSI indicator. (There is no minority requirement for cases with assigned arrears, or for arrears submitted for administrative offset.)

NOTE: Auto Exclusion for Tax Offset. Because unassigned arrears for non-minor children are still eligible for administrative offset (as well as for passport denial and MSFIDM), it is important to submit these cases to OCSE. To protect the cases from enforcement by tax offset SEARCHS automatically attaches a tax offset exclusion to each case in this category. (The auto exclusion does not apply, however, if any part of the unassigned arrears is for other, minor children.) This "auto exclusion" cannot be set or removed by the caseworker, and is the only instance of an automatic remedy-specific exclusion in Montana's federal offset submissions.

Each month SEARCHS identifies cases not previously submitted that meet the requirements in (1) through (4) above, and previously submitted cases with changes in arrears, eligibility, or other characteristics. Using this information SEARCHS creates and transmits to OCSE two files: one containing new submissions, the other containing updates to previous submissions. By federal requirement, SEARCHS also creates and transmits a special weekly file containing cases where the CSED has refunded collections made by federal offset.

Federal, CSED, and SEARCHS Steps. The remainder of this section describes the specific steps involved in offsetting income tax refunds and other federal payments to the obligor. Because the payment offset cycle requires alternating federal and CSED actions, the CSED procedures (manual and SEARCHS) are presented in context with the federal steps. DISCLAIMER: Federal steps listed here represent only the CSED's understanding of the federal intent, and may change as the result of changes in actual federal procedures, CSED information about those procedures, or both.

PROCEDURES

Federal Offset Specialist; Fiscal Section

1. **General information update.** Submits the following information to OCSE as indicated:

Federal Offset Specialist

(1) Certification Letter (submitted annually). The letter contains
- the CSED Administrator's signed certification that cases submitted during the upcoming year will meet OCSE requirements;
- the CSED's election to have OCSE print the pre-offset notices (step 7c) on behalf of Montana;
- the CSED's request to OCSE to hold new cases for 30 days from the date of the pre-offset notice before forwarding them to FMS;
- CSED contact information for the pre-offset notice and the offset notice (step 14), and for OCSE.

(2) State/Local Contact Phone and Address File (submitted whenever information changes). The electronic file contains CSED telephone and address information to be printed on the pre-offset and offset notices.

Fiscal Section

(3) Banking information (submitted whenever information changes). The CSED provides information to OCSE by letter for the electronic transfer of collections (step 14), including the name and address of the CSED's financial institution and the American Bankers Association routing number.

Caseworker

2. **Case Management.** Upon commencing enforcement in a non-interstate or interstate-initiating case, or in a case referred by a foreign country, determines whether collection by federal offset is appropriate. (Offset is presumed to be appropriate unless the case meets one or more of the suppression criteria described in POLICY.)

   Also determines whether exclusion of a particular remedy applies. Exclusion is determined on a case-by-case basis, according to whether the exclusion would be beneficial to overall enforcement in the case. For example, it may be beneficial to exclude the vendor payment remedy but maintain the other administrative and tax offset remedies in a case where the CSED has initiated income withholding on the vendor payments.

   Proceeds in 2a through 2c below as applicable. Monitors for any change and returns to this step (2) as applicable.

a. If federal offset is appropriate (suppression does not apply) and
   - the case is not interstate-responding, allows automated submission to proceed in the case (if necessary, removes any suppression entered in step 2c).
   - the case is an interstate responding case referred by a foreign country, determines whether the case meets the other requirements listed in POLICY, Identifying Cases to be Submitted (SSN status, arrears, child status); if so, notifies the Federal Offset Specialist the case should be submitted via SimPC for federal offset (if necessary removes any suppression entered in step 2c).

b. If federal offset is appropriate (suppression does not apply) but a remedy-specific exclusion applies, requests the assistance of the Federal Offset Specialist in submitting the exclusion on line (see step 3d).

c. If federal offset is not appropriate, suppresses submission via the federal offset field on the SEARCHS CAS screen.

SEARCHS/Federal Offset Specialist

3. **Case Submission and Update Files.** Identifies and submits cases for federal offset as in substeps 3a through 3d below. Weekly creates an outgoing report to OCSE, CUL00318.1, containing cases being submitted in 3a through 3c.

SEARCHS

a. **Deleting and modifying cases.** At the time of month-end processing, identifies cases previously submitted (and not deleted) whose federal offset characteristics listed below have changed since the last update.

   Creates a Case Submission and Update File listing the identified cases. For each case includes the necessary case information and the OCSE transaction type (defined below) for the specific change.

   Transmits the file to OCSE via CONNECT:Direct on the first Friday after completion of month-end processing. EXCEPTION: If month-end processing begins on a Friday but ends on a Saturday, the transmission will occur on that Saturday.

   FEDERAL OFFSET CHARACTERISTICS

   (1) Eligibility for submission. A change that results in a loss of eligibility requires a transaction type of D (delete).

   (2) Arrears amount. A change in arrears where the new amount still meets the threshold (assigned or unassigned) requires a transaction type of M (modify).

NOTE: If the arrears amount has decreased to below the threshold amount, the required transaction type is D (delete).

(3) Case type. A change in case type from assigned to unassigned, or vice versa, requires a transaction type of D to delete the case for the existing case type. (The case will be submitted again in step 3b with a transaction type of A to add the case for the new case type.)

(4) Suppression status. A change to remove the case from federal offset based on a caseworker suppression requires a transaction type of D (delete).

(5) Child Status. [UNASSIGNED CASES ONLY:] A change in the exclusion indicator from blank to TAX, or from TAX to blank (see POLICY, Identifying Cases to be Submitted, Child Status, Auto Exclusion) requires a transaction type of R (replace exclusion indicator). (The CSED is "replacing" the blank exclusion indicator in the case with a TAX indicator, or vice versa.)

NOTE: Name/Address/Identifier Change not a "Transaction." At the time of this writing it was not possible to change the obligor's first or last name, the obligor's address, or the case identifier (obligor's participant ID number) via submissions in this step (step 3), even by deleting the case with the old information and later adding the case with the new information. However, new federal transaction types allowing these changes were expected in the near future.

b. **Adding cases.** At the time of month-end processing, identifies all new cases (cases not submitted previously, or submitted previously and then deleted) that meet the requirements for federal offset submission. (These requirements are listed in POLICY, Identifying Cases to be Submitted). Also identifies cases deleted in step 3a for the purpose of changing the case type.

Creates a Case Submission and Update File listing the identified cases. For each case includes the necessary case information and a transaction type of A (add or recertify). Transmits the file to OCSE via CONNECT:Direct on the Friday following the second Thursday of the month.

c. **Reporting state payments.** Weekly identifies cases in which the CSED has sent a refund ("state payment") to the obligor for an earlier federal offset Creates a Case Submission and Update File listing the identified cases, including the necessary case information and a transaction type of S (state payment) for each case. Transmits the identified cases to OCSE via CONNECT:Direct on the Friday following disbursement of the refund. When submission of the state payments file falls on the same Friday as submission of the file in step 3a or 3b, combines files as appropriate.

Federal Offset Specialist

d. **Submitting cases on-line.** Upon being contacted by the caseworker in 3d(i) through 3d(iii) below, submits the case via on-line processing using SimPC. On-line submissions may be transmitted at any time, and are not subject to the month-end or weekly scheduling restrictions in steps 3a through 3c.

   i. **Interstate responding case.** For an interstate-responding case referred by a foreign country, where the caseworker indicates the case meets the SEARCHS requirements for SSN status, arrears, and child status (see POLICY, Identifying Cases to be Submitted), submits the case with a transaction type of A (add).

   Subsequently, works with the caseworker to identify changes; determines updates according to the criteria in steps 3a and 3c, and submits the case with a transaction type of D, M, S, or R. The R transaction may be used to set the TAX exclusion indicator (set automatically by SEARCHS in other cases), or to set any other exclusion indicator(s) required in step 3d(ii) below.

   ii. **Exclusion.** For any case previously submitted (and not deleted) for federal offset by SEARCHS or through SimPC, if the caseworker requests a specific exclusion, submits the case with a transaction type of R and lists the remedy(ies) to be excluded.

   iii. **Correction to SSN.** For any case previously submitted (and not deleted) for federal offset by SEARCHS or through SimPC, if the caseworker requests a correction to the social security number (SSN) in step 12b, processes the change as follows: Submits the case with a transaction type of D (delete), listing the incorrect SSN; then (that day or later), submits the case again with a transaction type of A (recertify), listing the correct SSN.

   In cases where coordination with SEARCHS processing may be required, contacts the system contractor and, if indicated, arranges for manual intervention by the programmer. Where necessary, refrains from submitting the on-line change. (Note that, depending on month-end timing, the SEARCHS programming correction may take up to six weeks to obtain. The correction relies on transmissions sent in two separate weekly update batches, and on the corresponding batch responses.)

SEARCHS

4. **Internal reports.** At the completion of month-end processing creates the following reports for CSED records:

- (RP5600.01) SEARCHS--IRS Tax Intercept Error--SSN
- (RP5600.02) SEARCHS--IRS Tax Intercept Missing Name

- (RP5600.03) SEARCHS--IRS Tax Intercept Submissions.

  The first two reports list cases that were not submitted in steps 3a through 3c because of SSN errors or missing names. The "Submissions" report includes all cases submitted in steps 3a through 3c. (The Federal Offset Specialist obtains these reports and files them in a secure location.)

5. **Notification to responding states.** For interstate initiating cases submitted as A (add) transactions in step 3, monthly prints a letter to each responding state listing the cases submitted.

6. **Notification to obligor in monthly statement.** Includes a notification concerning federal offset in the monthly statement to the obligor.

   (Note that not all obligors receive monthly statements. At the time of this writing the CSED was not sending statements in cases receiving income withholding payments. Also note that for obligors who do receive statements, there is no special SEARCHS action required, as the notification is standard text; it identifies the latest amount submitted to FMS by referring the obligor to the applicable field on the statement.)

OCSE

7. **OCSE processing, reports, and notices (pre-offset).** Upon receipt of a CSED Case Submission and Update File, processes the information as follows:

   a. Identifies any A (add) transactions that were submitted without the obligor's address; attempts to obtain the address. Prepares and transmits to the CSED an Unaccountable Missing Address File containing any transactions for which the address could not be obtained. This file may also contain any corrected social security numbers. (NOTE: In practice the CSED sends very few cases without an obligor address.)

   b. Performs edit validation processing for all transactions; also forwards the file to FMS for separate edit validation processing. Prepares a Rejected Case Submission and Update File containing cases with errors identified by OCSE or FMS, and a control record giving the number of accepted (non-rejected) cases. Transmits the complete file to the CSED via Connect:Direct.

   c. For cases not rejected in 7b above, proceeds in steps 7c(i) through 7c(iii) below.

      i. Updates the OCSE Case Master File; immediately makes the updated file available to the MSFIDM program for possible matches with obligor accounts. (See section CS 500.3 for continuation of the MSFIDM process.)

      ii. For each A (add/recertify) transaction, prepares and mails a pre-offset notice to the obligor; holds the case for 30 days, then proceeds in step 7c(iii). (The pre-offset notice is included at the end of this section.)

For all other transaction types proceeds immediately to step 7c(iii).

iii. Forwards accepted cases to FMS for update and applicable enforcement.

For purposes of passport denial combines assigned and unassigned arrears amounts for the same obligor, and forwards to DoS (1) all cases not previously submitted where combined arrears exceed $5,000, and (2) all cases previously submitted where both the assigned and the unassigned components are now deleted. (See section CS 508.7 for continuation of the passport denial process.)

8. **Bankruptcy processing.** Upon receiving notification that an obligor in the Case Master File has declared bankruptcy, processes the case in step 8a or 8b below as applicable. (See step 15 for CSED responsive actions in bankruptcy cases.)

   a. If the notification is from FMS proceeds as follows:

      i. If the bankruptcy was filed within the last year, immediately adjusts the case in the Case Master File to exclude the case from tax and administrative offset.

      ii. If the bankruptcy was filed more than one year ago, does not adjust the case in the Case Master File.

   Notifies Montana via a Bankruptcy Notification Letter; includes with the letter a list of all obligors identified for bankruptcy by FMS, and any additional paperwork from FMS.

   b. If the notification is from the IRS, contacts Montana directly to determine if the money has been returned to the obligor. (If not, the IRS will make a reversal on the account.)

CSED System Contractor/SEARCHS

9. **Automated processing of OCSE pre-offset reports.** Processes the unaccountable and rejection files transmitted electronically in step 7b, as follows:

   a. For each case listed, resolves the problem automatically if possible. (SEARCHS is designed to recognize and correct certain synchronization issues resulting from overlapping timetables for updates to or from OCSE.)

   b. In cases where the problem is not resolved automatically in step 9a, updates the DBD screen to indicate the federal offset submission was problematic, and provides the OCSE error code; creates an event and sets a tickler to the caseworker. (Error codes, including "problematic," are listed in the CSED

Accounting Manual available in the regions; problematic codes apply only for the current tax year.)

c. Processes the electronic files, creates reports, and writes the reports to RDS for access and printing. Prints and delivers the following reports to the CSED Federal Offset Specialist:

  - (RP5534.01) Tax Offset Edit Update Validation
  - (RP5536.01) Tax Offset Unaccountable.

Federal Offset Specialist

10. **Manual processing of pre-offset errors; responding state notifications.** Takes action in steps 10a and 10b below.

    a. Upon receipt of the reports printed in step 9c, files the reports in a secure location. Sends the edit update validation report to the CSED Regional Managers. In rare cases at the request of a caseworker in step 12a, arranges for programmer intervention as needed to remove a problematic code.

    When needed, also accesses or prints from RDS the following summary report:
    - (CUL00358.1) Case Counts for the State of Montana.

    This report gives the number of transactions, the number of cases rejected, and other data; it also provides definitions for error codes used by OCSE.

    NOTE: Future Electronic Access to Federal Offset Reports. At the time of this writing the CSED was working on system and security changes to provide the Federal Offset Specialist and Regional Managers with greater electronic access to federal offset-related reports.

    b. [INTERSTATE INITIATING CASES:] Upon monthly receipt of the notifications printed in step 5, mails the notifications to the appropriate responding states, advising them of cases Montana has submitted for federal offset.

Regional Manager

11. **Management of OCSE pre-offset reports.** Upon receipt of the edit update validation report forwarded in step 10, reviews the report, notifies the appropriate caseworker(s) of any errors that may be correctable (for example, federal information shows the name and SSN submitted for the case do not match), and files the report in a secure location. Makes the report available to caseworkers as questions arise.

Caseworker

12. **Resolution of rejected cases; changes to accepted cases.** Takes action in steps 12a and 12b below as applicable.

a. In a rejected case, upon becoming aware of the discrepancy via the report received in step 11, resolves the error if applicable and updates SEARCHS. Resolution may require detailed investigation into the facts of the case, depending on the type of problem reported (for example, edit validation has revealed the obligor name and social security number do not match).

   NOTE: Problematic Cases. Cases designated as problematic cannot be resolved at the caseworker level, as only the system contractor can remove a problematic status. In rare cases, where the benefit to the case justifies the resources required, the Federal Offset Specialist may request programming intervention to allow the case to be submitted for offset. (SEARCHS does not include problematic cases in the regular monthly and weekly submissions in step 3; however, the cases are included in the annual submission in step 25.)

b. In an accepted case (a case submitted previously and not rejected by OCSE), upon discovering that the social security number on SEARCHS is incorrect, obtains the correct number and contacts the Federal Offset Specialist for assistance.

   EXAMPLE: The CSED submits Thomas Green, Jr., SSN 111-22-3333. OCSE accepts the case because edit validation confirms the SSN belongs to a person whose last name begins with GREE. Then the caseworker discovers that the submitted SSN does not belong to the obligor in the case, but to his father, Thomas Green, Sr. The obligor's SSN is really 444-55-6666. The CSED must correct the SSN (via procedures in step 3d(iii)) as soon as possible to ensure the right person's payment will be offset.

13. **Pre-offset contact with the obligor.** Upon being contacted by an obligor in response to a pre-offset notice, prepares and sends to the obligor form CS-508.3A, Letter to Obligor Concerning Submitted Arrears, with a debt computation worksheet showing the updated debt and how it was determined.

    Upon being recontacted by the obligor after receipt of the debt computation worksheet, answers the obligor's questions and explains the entries on the debt computation worksheet as needed. Identifies any entries that are not reflected in the amount in the pre-offset notice, and explains that any actual offset will be for the updated amount. Also, takes any action that applies in the substeps below.

    a. **Error in debt.** If the discussion reveals an error in the amount owed, sends the necessary adjustment to TAPP to correct SEARCHS. If the correction is downward, explains to the obligor that
       - the correction will be submitted automatically in the next monthly update file, and
       - if an offset occurs before FMS receives the update, the CSED will refund the appropriate amount to the obligor.

b. **Joint tax refunds.** If the obligor is concerned about offset of a joint income tax refund, explains that the IRS will, at the time of the actual offset, notify the unobligated spouse (the person who has filed a joint return with the obligor) of the steps to take to recover the unobligated spouse's share of the tax refund. Also, where applicable, reiterates that the IRS encourages taxpayers to file an injured spouse claim with the tax return (this statement is already included in the pre-offset letter); this will allow the IRS to determine the obligor's share of the tax refund, and to offset only that share of the payment.

c. **Opportunity for administrative review.** If after the discussion the obligor still wishes to object to the offset, proceeds as in section CS 508.5, Federal Offset Administrative Review.

d. **Offset against wrong person.** If the person contacting the CSED is not the obligor in the case, but was identified for offset by the OCSE because of an incorrect social security number, follows the procedures in step 16d or 16e, as applicable (except for issuing a refund).

e. **Rapid refund.** If the obligor is contacting the CSED because he or she has been denied a "rapid refund" or "refund anticipation" loan based on a federal agency debt indicator, explains as follows:

The financial institution has access to a federal database, provided by FMS, that contains individuals who owe a debt to a federal agency (indicator I); individuals who owe a debt being collected for a federal agency, or for a child support or other agency (indicator F); and individuals who owed an I or F debt in the recent past that has now been paid off. The debt indicator tells the financial institution that the loan applicant is included in this database, but does not specify the status of the debt. For example, the F indicator does not tell whether a debt is for child support or some other purpose, whether the debt is subject to tax offset or administrative offset, or even whether the debt is still owed.

The CSED will not become involved in the loan approval process. If the obligor pays off the child support debt the CSED will submit the update to OCSE as usual (step 3), and OCSE will forward it to FMS. However, if the obligor has any other debts included in the FMS database, these would still remain. The obligor must resolve the issue with the agency on whose behalf the debt is being collected, and with the financial institution.

FMS

14. **Federal payment offset and notice.** Implements the federal payment offset remedy as follows:

a. **Master file; payment offset.** Maintains a master file of cases eligible for offset, updated upon receipt of each Case Submission and Update File from OCSE. On a continuing basis matches cases in the FMS master file with eligible federal payments to the obligor. **A match between a case and a payment occurs when the system finds the same social security number, and the same first four characters of the last name.** Offsets the payment according to federal priorities for debts collected by the federal government. (In a particular case the CSED may receive all, some, or none of an offset amount. This is because IRS tax debts take priority over all support arrears, and other federal debts take priority over non-TANF arrears.)

EXCEPTION FOR RETIREMENT PAYMENTS: If a match occurs with a federal retirement payment, FMS sends a pre-offset notice to the obligor 60 days prior to the offset and again 30 days prior to the offset. This notice alerts the obligor that his or her retirement payment may be reduced.

b. **Arrears reduction; transfer of proceeds.** For each case in which an offset occurs, decreases the arrears amount in both the FMS and the OCSE master files. If the offset decreases the arrears amount to $0, deletes the case from the master files. Sends proceeds from the offset to the Treasury Department's Program Support Center.

Program Support Center

Every two weeks, on behalf of OCSE, sends to Montana by electronic funds transfer the total amount of collections for the period applied to support arrears, less the applicable fee for each case with a collection, and less any federal adjustments. (Federal adjustments occur when the IRS has had to send to an unobligated spouse the spouse's portion of a joint tax refund previously distributed to the CSED.)

FMS

c. **Notice of Offset.** In each case where offset amounts are applied to support arrears, sends a Notice of Offset to the obligor explaining that FMS has retained all or part of the federal payment toward satisfaction of past-due support. (The offset notice is included at the end of this section.)

NOTE 1: Timing of Notifications. It is probable that the obligor will receive the offset notice before Montana receives its notification of the offset via the collection report (step 17).

NOTE 2: Special Version of Offset Notice for Injured Spouse Claim. In the case of an offset against a joint refund where the unobligated spouse has already received his or her portion of the refund, FMS will send the obligor a special version of the offset notice to assist Montana in determining the status of the payment.

Federal Offset Specialist/Caseworker

15. **Bankruptcy processing.** Upon identifying a case where an obligor has declared bankruptcy after the case was submitted for federal offset, proceeds in step 15a through 15c below as applicable.

Federal Offset Specialist

a. If identification is the result of a Bankruptcy Notification Letter from OCSE (see step 8a), keeps a copy of the letter in a secure location, and forwards the letter to the appropriate caseworker for action in step 15c.

b. If identification is the result of direct contact by OCSE (see step 8b), provides the necessary information concerning disbursement of any collection, and notifies the caseworker for action in step 15c.

Caseworker

c. If identification occurs in the course of ordinary casework, or if notified by the TAPP Supervisor in step 15a or 15b, suppresses the federal offset remedy on the CAS screen and sets a tickler to check for a change in status. If a federal offset collection has been received in the case and disbursed to the obligee, anticipates a federal adjustment (based on an IRS reversal) and monitors SEARCHS accounting for the necessary accounts receivable as in step 24.

   Upon completion of the bankruptcy process and after consultation with the regional legal unit, removes the suppression.

Caseworker

16. **Post-offset contact with the obligor.** Upon being contacted by the obligor regarding an offset that has occurred, prepares and sends to the obligor form CS-508.3A, Letter to Obligor Concerning Submitted Arrears, with a debt computation worksheet showing the updated debt and how it was determined. Asks the obligor to send a copy of the Notice of Offset received from FMS.

    Upon being recontacted by the obligor after the obligor has received the debt computation worksheet, answers the obligor's questions and explains the entries on the debt computation worksheet as needed.

    Takes any action that applies in the substeps below. Specific procedures will depend on whether the CSED has received, or is still awaiting, the actual collection from the offset (see step 23).

a. **Refund due obligor; joint offsets.** If the amount of the offset was more than the arrears actually owed (because of a modification to arrears that did not reach FMS by the time of the offset, or because of an error discovered in the course of this conversation), informs the obligor and requests the appropriate adjustment to SEARCHS. Sends a copy of the offset notice (or the applicable page of the collection report, if the offset notice is not available) to TAPP with the adjustment request.

[Temporarily not applicable--see NOTE below:]If the offset was against a joint tax refund, and the Notice of Offset indicates the IRS has not yet processed and distributed any injured spouse claim (see NOTE 2, step 14c), informs the obligor the CSED refund will be made payable to both the obligor and the unobligated spouse named in the offset notice.

IMPORTANT: In generating a two-party warrant to refund a joint offset, TAPP will determine the name of the unobligated spouse by consulting the Notice of Offset or by requesting the name from the Federal Offset Specialist. The Federal Offset Specialist will consult the electronic "matrix" file issued by OCSE in step 17b. TAPP will not rely on a name provided by the obligor unless the name is verified by the federal information.

NOTE: Two-Party Warrant-Writing Not Functional. At the time of this writing the necessary programming to write two-party warrants was not in place.

b. **Child emancipated.** TAX OFFSETS ONLY: If the tax offset was for an unassigned arrears case in which some or all of the arrears was owed to a child who is now emancipated, determines whether the child was emancipated at the time of the offset. (For purposes of this step, "emancipated" does not include children who will become emancipated later in the year.)

   i. If so, and the collection exceeds the unassigned arrears amount owed for any remaining minor children, requests an adjustment on the collection to refund the difference to the obligor.

   Note that the situation in this substep can occur when SEARCHS does not submit a TAX exclusion because there are minor children remaining in the case. For further explanation of the TAX exclusion, see POLICY, Identifying Cases to be Submitted, Child Status, Auto Exclusion.

   ii. If so, but the collection does not exceed the unassigned arrears amount owed for any remaining minor children, allows the payment to be released to the obligee.

   iii. If not, allows the payment to be released to the obligee. (Note that in cases where the IRS declining balance has now been reduced to $0 because there are no minor children remaining who are owed unassigned arrears, this may require an adjustment to restore the declining balance to the positive amount, distribute the payment to the obligee, then return the declining balance to $0.)

c. **Opportunity for administrative review.** If the offset amount was correct, but the obligor does not agree with the determination and wishes to contest the offset, explains the opportunity for administrative review, and proceeds as in section CS 508.5.

d. **Offset against wrong person--CSED error.** If the person contacting the CSED claims he or she is not the obligor in the case, but was identified for offset only because the CSED submitted his or her social security number instead of the obligor's, verifies the person's identity through appropriate means. If the person is not the obligor, promptly requests an adjustment to pre-release the appropriate amount to the non-participant; sends a copy of the offset notice to TAPP with the adjustment request. Corrects the social security number on SEARCHS.

e. **Offset against wrong person--taxpayer error.** If the person contacting the CSED is not the obligor in the case, but was identified for offset by the OCSE because he or she filed a tax return using the obligor's social security number, refers the contacting person (the taxpayer) to the IRS. The IRS will correct its records, adjust the collection sent to Montana, and issue a refund to the taxpayer. (The same procedure applies if the taxpayer and the obligor have been assigned the same SSN by the Social Security Administration. The IRS will issue a refund to the taxpayer, and have him or her obtain a new SSN from SSA.)

OCSE

17. **OCSE collection files.** Every two weeks issues and transmits via CONNECT:Direct the files in 17a and 17b below.

a. **Collection report, federal adjustments, cases transferred from other states.** Issues a Collection and Adjustment File (collection file) to Montana listing, for each case, the amount of the offset before subtraction of the fee and any adjustments.

In cases where the IRS has, during the month, paid an unobligated spouse claim against an offset previously paid to Montana, also includes in the collection file the amount of the claim; this amount (the adjustment) is subtracted from the total collections sent to Montana for the period.

For cases submitted for federal offset by another state but "transferred" to Montana for purposes of administrative review, includes the case in the Montana collection file. (Cases transferred to Montana must have Montana support orders; see section CS 508.5, Federal Offset Administrative Review, for conditions and procedures for receiving or sending transfer cases.)

b. **Related reports.** Also transmits to Montana the following files related to the collections in step 17a: Dear Colleague Letter with a summary collection report showing every state's total collections; net check amount report; IRS name change report; address change report; statement of service fee report; and a federal offset collection "matrix" containing all the information in step 17a **and** the name of the unobligated spouse for each case with a joint tax offset collection.

Also prints and mails to Montana a paper copy of the Dear Colleague Letter.

CSED System Contractor

18. **Electronic receipt of OCSE collection report.** Upon receipt of the collection file and other accompanying files from OCSE, processes the files, creates reports, and writes the reports to RDS for access and printing. Prints and delivers the following reports to the CSED Federal Offset Specialist; stores the collection data pending receipt of funds (step 23):

- (RP5532.01) IRS Tax Offset Monthly Collections
- (RP5532.02) Detail Listing of Intercept Record Addresses
- (RP5532.03) Reported Versus IRS Name Changes.

Federal Offset Specialist

19. **Receipt of OCSE collection report.** Upon receipt of the reports printed in step 18, retains and files one copy in a secure location, and sends the reports to the CSED Regional Managers.

When needed, also accesses or prints from RDS one or both of the following reports; where applicable, notifies the caseworker and the TAPP adjuster of cases identified by the second report:
- (CUL00357.1) SEARCHS - Federal Collections Report File
- (CUL00377) SEARCHS - Individuals with FS/FA Combination.

The "Federal Collections" report contains the Dear Colleague Letter with the totals for offset amounts, fees, adjustments, name changes, and address records.

The "Individuals" report lists obligors for whom a federal adjustment (see step 14b) is received in the same file as a collection; the CSED uses the information to identify cases where all or part of the collection should be held to satisfy the federal adjustment, so a receivable situation can be lessened or avoided.

NOTE: Future Electronic Access to Federal Offset Reports. At the time of this writing the CSED was working on system and security changes to provide the Federal Offset Specialist and Regional Managers with greater electronic access to federal offset-related reports.

SEARCHS

20. **Automatic system update.** Updates system information as follows:

a. Upon loading of payments in step 23, updates accounts according to the collection report transmitted in step 17, crediting the obligor with the full offset amount (before the fee is deducted). Distributes the actual amount received (the offset less the fee) to each obligee. Limits the amount distributed to the obligee to the amount listed in the federal offset declining balance for the case and collection type (see step 20c below).

NOTE: Notice of Fee Amount. In non-TANF cases the amount deducted by FMS for the fee is noted on the state warrant. The federal fee amount changes annually. The case opening letter notifies participants of the fee amount in effect at the time; the amount for any later year is available from the regional office. (Current and historical amounts are listed in the FOF and FAF tables on SEARCHS.)

b. [Temporarily not applicable--see NOTE below:] Upon updating accounts in step 20a above, sends a tickler to the caseworker for each federal offset or adjustment.

NOTE: Collection Tickler Not Functional. At the time of this writing the programming for this tickler was not in place; until it is, the caseworker must review the collections report or monitor the SEARCHS accounting screens to be informed of a federal offset payment.

c. At month-end updates the following federal offset-related declining balances (DBDs) in each case, for all collections and adjustments received in step 23 during the month; note that a collection for a particular case type (assigned vs. unassigned) will reduce both the FAO and IRS DBDs for that case type:

(1) Administrative offset assigned (FAO A)
(2) Tax offset assigned (IRS A)
(3) Administrative offset unassigned (FAO U)
(4) Tax offset unassigned (IRS U).

(These DBDs are also increased or decreased monthly as a result of activity outside the federal offset process, such as arrears accruals, other payments received, and other account adjustments.)

21. **Notification to responding states.** Immediately upon resolution in step 20a of a federal offset collection in an interstate initiating case, initiates a CSENet transaction to the responding state notifying the state of the amount of the collection. In cases where the responding state is not CSENet-ready, generates a tickler to the caseworker to notify the other state of the offset (the caseworker must then issue form CSE-IIUP to the responding state listing the offset amount). Also notifies the responding state of any federal adjustment (federal adjustment is explained in step 14b). For collection by federal tax offset, does not disclose the filing status.

Regional Manager or Designee

22. **Collection report safeguarding.** Upon receiving the hard copies of the collection report and accompanying reports, notifies caseworkers as appropriate (according to regional procedures); files the reports in a secure location.

EFT/EDI Specialist, Fiscal Operations Section

23. **Receipt of funds.** Upon being notified that the electronic transfer of collections in step 14b has occurred and that the funds have been received in Montana, issues the necessary batch and cashier numbers and forwards the information to the Treasurer's Office. Requests that TRW run the electronic file against SEARCHS in the nightly batch process. Reviews the batch run and checks that the totals for collections, adjustments, and fees match those in the Dear Colleague Letter (see step 19); releases the batch to load the individual payments, fees, and adjustments onto SEARCHS, for processing in step 20.

    Note that the electronic funds receipt and processing in this step will not occur until **after** Montana receives the collection file for the offsets in step 18; the lag time may be from one day to one week.

    NOTE: Synchronization Problems. At the time of this writing SEARCHS was experiencing "synchronization" problems related to various aspects of the OCSE update cycle and the timing of FMS processing, PSC funds transfer, and SEARCHS month-end run. Certain scenarios can create a false refund situation where SEARCHS puts a federal offset payment on the exceptions list even though the money should be distributed to accounts. Until the problem is resolved, caseworkers must review cases on the SEARCHS exceptions list very carefully to avoid refunding money to the obligor in error.

Caseworker

24. **Case management based on offset information.** Upon becoming aware of a collection by federal offset, takes appropriate enforcement action in the case, consulting the collection and accompanying reports as necessary. Actions may include initiating enforcement against a new payment source, requesting an exclusion for a particular remedy, or suppressing federal offset in the case. (Exclusion may apply, for example, if the offset came from a federal retirement payment and the CSED is able to identify the federal payor and begin income withholding.)

    In cases where the collection report includes a federal adjustment for a previously received joint offset collection (see step 17), monitors SEARCHS accounting to ensure the correct application of the adjustment as an accounts receivable (AR). Specifically, if the previous collection has been paid to the non-TANF obligee, an obligee AR should be set up for the amount of the adjustment, and the obligor's debt should be increased by the same amount. If the previous collection has been refunded to the obligor, an obligor AR is required.

If the offset creates a refundable amount proceeds as in step 16a.

Action may also be necessary to resolve name or address discrepancies and to update the information on SEARCHS.

Federal Offset Specialist

25. **Annual submission.** Annually, according to a schedule established by OCSE, works with the CSED system contractor to create and transmit to OCSE an Annual Submittal File. The annual submission process requires that any weekly submissions to OCSE (state payments; programmer-created adds, deletes, or modifies) be discontinued several weeks before the Annual Submittal File is created.

    The annual file contains all CSED cases that, at the time the file is created, meet the SEARCHS requirements for federal offset submission (see POLICY, Identifying Cases to be Submitted). Lists a transaction type of [space] (this looks like a blank) for all cases included in the file; this transaction type distinguishes the case from a case being submitted under the continuous submission process. Upon transmittal of the annual file, refrains fom submitting regular weekly or monthly update files until the processing and confirmation in step 27 are completed.

    NOTE: Full Caseload Certification. The annual file contains every case that meets SEARCHS submission requirements, regardless of whether the case has been added or changed since the last weekly update in step 3, or whether the case has a "problematic" indicator on SEARCHS. Because the file represents the CSED's entire certified caseload, the annual submission has the effect of starting the federal offset certification process over again for each tax processing year.

OCSE

26. **OCSE annual submission processing.** For each case in the Annual Submittal File compares the information to the information in the existing Case Master File. Generates transactions of [A], [M], or [D] as needed, and inserts the transactions into the normal OCSE weekly processing cycle. (Cases that have not changed since the CSED's last weekly update will not have transactions generated.)

    For each case with a transaction generated, proceeds as for a case received through the weekly update process (step 7). This includes rejecting, forwarding, or holding and forwarding each case as appropriate. Compiles and transmits to the CSED a complete Rejected Case Submission and Update File based on the annual submittal. Monitors for confirmation that the CSED has received the file and completed the necessary processing; upon confirmation, resumes regular weekly update processing.

    After all annual processing in this step has been completed, observes a freeze period during which regular weekly updates are not accepted; uses the freeze period to reconcile OCSE data with FMS and DoS data by the end of the tax year.

Federal Offset Specialist

27. **Processing the annual rejection file.** Upon receipt of the Rejected Case Submission and Update File issued in step 26, oversees the CSED's and system contractor's processing of the file as in steps 9 through 12. When processing is complete, notifies OCSE in writing (via fax), and arranges with the system contractor for SEARCHS to resume regular monthly and weekly updates as in step 3. (Note that the first update will contain any changes identified during the processing of the annual rejection file.) Also arranges with the system contractor to discontinue monthly and weekly updates during the freeze period described in step 26.

Payments Exempt by Federal Law[1]

Payment Agency	Type of Payment	Statutory Exemption (US Code)[2]
Dept of Agriculture	Federal Crop Insurance indemnity	7 USC 1509
Dept of Defense	• Survivors Benefits (military retirement) • Medal of Honor pension	• 10 USC 1450(i) • 38 USC 1562(c)
Dept of Education	Payments under a program administered by the Secretary of Education under Title IV of the Higher Education Act of 1965	31 USC 3716(c)(1)(c)
Dept of Labor	• Payments under the Black Lung Benefits Act, other than payments under part B • Longshore and Worker's Compensation Act	• 30 USC 932(a) [incorporating 33 USC 916] • 33 USC 916
Dept of Treasury	Payments under the tariff laws	31 USC 3701(d)
Dept of Veterans Affairs	Payments of benefits under any law administered by the Secretary of Veterans Affairs including: • Pension programs • Parents' dependency and indemnity compensation programs • Disability and death compensation • Monetary educational assistance • Monetary benefits under training (including work study allowances) and rehabilitation programs • Special monetary benefits • Life insurance payments • Funeral and burial expenses • Financial assistance for adopted housing and automobile equipment • Minimum income window • Special allowance under 38 USC 1312 • Attorney fees withheld from retroactive benefits for representation at the Board of Veterans Appeals • Clothing allowance • Apportionment funds • Accrued benefits • Child support withholdings • Reimbursement for travel, medical, rehabilitation, and health care related needs and activities	31 USC 5301(a)
Railroad Retirement Board	Tier 2 Railroad Retirement benefits	45 USC 231(m)
Social Security Administration	• Payments under the Black Lung Benefits Act, other than payments under part B • Payments made under the Social Security Act, except to the extent provided under 31USC 3716(c) [Debt Collection Improvement Act]	• 30 USC 932(a) [incorporating 33 USC 916] • 31 USC 3701(d)

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[1] Table information provided by FMS. See also 31 CFR 285.1(i).

[2] For US Code see Web site: http://uscode.house.gov/usc.htm

Payments Exempted by Action of the Secretary of the Treasury (31 USC 3716(c)(3)(B))[3]

Payment Agency	Type of Payment
Dept of Agriculture	Department of Agriculture, Food and Nutrition Services benefit payments made under the following programs: • Food stamp program • Nutrition assistance program for Puerto Rico • Special supplemental nutrition program for women, infants and children (WIC) • WIC farmer's market nutrition program • National school lunch program • Summer food service program • Child and adult care food program • Special milk program for children • School breakfast program
Federal Emergency Management Administration	Federal Emergency Management Administration payments under the following disaster relief and emergency assistance programs: • Individual & family grant program • Disaster housing • Crisis counseling assistance & training • Disaster unemployment assistance • Cora Brown fund (disaster aid) • Community disaster loan • Public assistance to states and local government • Fire suppression assistance • Urban search and rescue
Pension Benefit Guaranty Corporation	Pension Benefit Guaranty payments as follows: • Premium refunds to pension plans and plan sponsors • Financial assistance to multiemployer plans • Contractor bank payments to participants and beneficiaries

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[3] Table information provided by FMS.

CHILD SUPPORT ENFORCEMENT DIVISION
DEPARTMENT OF REVENUE MS 01550
550 W 7TH AVE 4TH FL
ANCHORAGE AK 99501-6699
INSTATE (800) 478-3300

CHILD SUPPORT ENFORCEMENT DIVISION
W 7TH AVE 4TH FL
ANCHORAGE AK 99501-6699
PHONE(S): (907) 269-6900

CURRENT DATE

** CONTACT ADDRESS ABOVE **

MR AND/OR MS JOHN DOE
3331 ANYSTREET BLVD
ANYTOWN USA 99999-0123

SSN	CASE NUMBER	LOCAL ID	PAST DUE AMOUNT CLAIMED
992-12-3456	33331Z97RN1	001	$520 (NON-TANF)

The agency identified above has determined that you owe past-due child and/or spousal support. Our records show that you owe at least the amount shown above. If your case was submitted to the United States Department of the Treasury for collection in the past, this amount is subject to collection at any time by Administrative Offset and/or Federal Tax Refund Offset. If your case has not already been submitted to the United States Department of the Treasury and you do not pay in full within 30 days from the date of this notice, this amount will be referred for collection by Administrative Offset and/or Federal Tax Refund Offset. Under Administrative Offset (31 U.S.C.3716), certain Federal payments that might otherwise be paid to you will be intercepted, either in whole or in part, to pay past-due child and/or spousal support. Under Federal Tax Refund Offset (42 U.S.C.664;26 U.S.C.6402), any Federal income tax refund to which you may be entitled will be intercepted to satisfy your debt.

If you owe arrearages of child support in an amount exceeding $5,000, the agency identified above will certify your debt to the State Department pursuant to 42 USC 654(31). Once you are certified, the Secretary of State will refuse to issue a passport to you, and may revoke, restrict or limit a passport that was previously issued. The amount of your past-due support will also be reported to consumer reporting agencies.

Your debt will remain subject to collection by Federal Tax Refund Offset and/or Administrative Offset until it is paid in full. Important: If you owe current support, any further arrears accruing due to payments missed may be added to your debt and will be subject to collection by Federal Tax Refund Offset and/or Administrative Offset now or in the future without further notice. To determine additional amounts owed or the total amount past-due which the agency has submitted for collection, you may contact us at the address or phone number listed above.

You have a right to contest our determination that this amount of past-due support is owed, and you may request an administrative review. To request an administrative review you must contact us at the address or phone number listed above within 30 days of the date of this notice. If your support order was not issued in our state, we can conduct the review or, if you prefer, the review can be conducted in the state that issued the support order. If you request, we will contact that state within 10 days after we receive your request and you will be notified of the time and place of your administrative review by the state which issued the order. All requests for administrative review must be made by contacting the agency identified above.

If you are married, filing a joint income tax return, and you incurred this debt separately from your spouse, who has no legal responsibility for the debt and who has income and withholding and/or estimated tax payments, your spouse may be entitled to receive his or her portion of any joint Federal Tax Refund. If your spouse meets these criteria, he or she may receive his or her portion of the joint refund by filing a Form 8379 - Injured Spouse Claim and Allocation. Form 8379 should be attached to the top of the Form 1040 or 1040A when you file, or filed according to other instructions as indicated on the Form 8379.

Department of the Treasury
Financial Management Service
P.O. Box 1696
Birmingham, AL 35201-1686

THIS IS NOT A BILL PLEASE RETAIN FOR YOUR RECORDS

{Date}

{Name/Address}

Dear {Debtor Name}

As authorized by Federal Law, we applied all or part of your Federal payment to a debt you owe. The government agency (or agencies) collecting your debt is listed below.

AGENCY:
{Creditor Agency Name/phone/address}

Amount this Creditor:

PURPOSE: *{Child Support}*
Amount: *{Amount sent to the Creditor Agency}*

TIN um:
Debt Trace Num:
Acct Num:

Creditor: Site:

The Agency has previously sent notice to you at the last address known to the Agency. That notice explained the amount and type of debt you owe, the rights available to you, and that the Agency intended to collect the debt by intercepting any Federal payments made to you, including tax refunds. **If you believe your payment was reduced in error or have questions about this debt, you must contact the Agency at the address and telephone number shown above.** The U.S. Department of the Treasury's Financial Management Service cannot resolve issues regarding debts with other agencies.

We will forward the money taken from your Federal payment to the Agency to be applied to your debt balance; however, the Agency may not receive the funds for several weeks after the payment date. If you intend to contact the Creditor Agency immediately, please have this notice available.

{Signature}
{Title}
Debt Management Services
(800) 304-3107

PAYMENT SUMMARY
PAYEE NAME:
PAYMENT BEFORE REDUCTION:
TOTAL AMOUNT OF THIS REDUCTION:
PAYING FEDERAL AGENCY {Paying Federal Agency} *If the paying agency is IRS tax refund include*:
(See Insert on Tax Refund Offsets for Additional Information).

PAYMENT TYPE:
PAYMENT DATE:

SUPERSEDES

CS 508.4, "Federal Tax Intercept Administrative Reviews--Overview and Policy," November 1, 1989; CS 508.6, "Federal Tax Intercept Administrative Reviews--In-State Reviews," November 1, 1989; CS 508.8, "Federal Tax Intercept Administrative Reviews--Interstate Requests," November 1, 1989.

REFERENCES

45 CFR 303.72

POLICY

Federal regulations governing the federal offset program require that if the CSED receives a complaint from an obligor concerning the CSED's submission of the obligor's case for federal offset, or concerning an offset that has already occurred as a result of the CSED's submission, the CSED must conduct an administrative review "to determine the validity of the complaint." Regulations do not specify the proofs required in, or the opportunities for appeal from, the administrative review. The CSED has chosen to conduct the review at the regional manager level, with appeal available in the form of a federal offset hearing conducted by the CSED Administrative Law Judge. This section addresses only the regional manager's review--technically the only "administrative review" required. Policy and procedures for appeal via CSED federal offset hearings are given in section CS 405.20.

Regulations also state that if a case is submitted for federal offset by a state that did not issue the support order in the case, the obligor may request the administrative review be conducted by the state that issued the order. If the obligor takes this option, the case becomes a "transfer case" for purposes of federal offset administrative review. Montana can be involved in a transfer case in two ways: (1) as the state that submitted the case for offset but did not issue the order, and (2) as the state that issued the order but did not submit the case for offset. This section describes both processes.

Federal regulations for transfer cases require the state with the order to conduct the review and make a decision within 45 days of receiving the request from the submitting state. In non-transfer (Montana submitting) cases, CSED policy adopts the same 45-day requirement for a review decision, although there are no federal time frames for these cases.

In non-TANF cases where an administrative review is requested before money from an offset collection is disbursed to the family, the CSED delays disbursement pending the results of the review.

A federal offset administrative review is not considered an adjudication of the debt for purposes of other CSED enforcement actions.

PROCEDURES

MONTANA CASES (INCLUDING INTERSTATE INITIATING)

Caseworker

1. Upon being contacted by an obligor in response to an OCSE pre-offset notice, a CSED pre-offset statement (obligor bill), or an FMS offset notice, follows procedures in section CS 508.3, Collection by Federal Offset, for preparing and sending a debt computation worksheet, explaining how the debt was determined, and attempting to resolve the obligor's concerns. (If the obligor is responding to an offset submitted by another state, refers the obligor to the other state for relief. If the obligor is requesting a review in Montana because Montana issued the support order in the case, explains the submitting state must send the referral to Montana to initiate the review.)

   If the obligor's concerns are resolved, enters a SEARCHS case note documenting the contact and the resolution. If the obligor's concerns cannot be resolved, proceeds to step 2.

2. Determines whether the federal offset case is eligible for administrative review. Review is available if any of the following circumstances apply:

   (1) The CSED has never performed an administrative review in the case.

   (2) The CSED has previously performed an administrative review in the case, but the obligor is now disputing months that occurred after the latest review.

   EXAMPLE: The CSED submitted arrears of $600 in October, and the obligor requested an administrative review at that time. The review determined the amount was correct. The obligor continued to pay current support for the next six months, but made no payment on arrears, so the case was not modified to OCSE. In April the obligor contested the same $600, **claiming he made a payment on the arrears in January.** The obligor must be granted an administrative review, because he is disputing a month that was not included in the previous review.

   (3) In unusual situations, the obligor is disputing the CSED's (or the federal government's) jurisdiction or authority to enforce by federal offset in the case, and there has been no previous administrative review where the obligor could have raised this objection. For example, the obligor is disputing the CSED's authority to enforce against a pay source that is protected by a court-ordered stay on the collections, or that comes under the exclusive jurisdiction of a Native American tribe, and the pay source had not been offset at the time of any previous review. (Note that it should be possible to resolve most of these claims before they get to administrative review.)

   If the case is eligible for administrative review, proceeds to step 3. If the case is not

eligible for administrative review, explains a review is not available and proceeds in step 2a or 2b below.

a. If the obligor accepts this determination, enters a SEARCHS case note documenting the denial and the reason, and takes no further action.

b. If the obligor insists on a review, proceeds to step 3. (Unless new information is provided by the obligor in the written request, the request will be denied in step 6, allowing the obligor to request a hearing on the denial.)

3. Informs the obligor an administrative review is available, and explains the following aspects of the review process as applicable:

   (1) The review must be requested in writing, using the Request for Administrative Review provided by the CSED or an equivalent document.

   (2) Montana law will be used to interpret the support order upon which the offset is based.

   (3) If the support order was issued by another state, the obligor may request that Montana forward the case to that state for administrative review.

   (4) Any debt for which the CSED has issued and resolved a notice in another action (such as income withholding) will be automatically confirmed during the administrative review without further examination.

   (5) In a non-TANF case the CSED will inform the obligee of the time and place of the review.

4. Prepares form CS-508.6A, Response to Inquiry about Federal Offset and Request for Administrative Review. Refers the case, with the prepared form, to the regional manager. (If the caseworker assigned to the case is the regional manager, the regional manager should refer the case to the CSED staff attorney, who becomes the "designee.")

Regional Manager or Designee

5. Reviews and signs the response letter portion of the form; sends the entire original form (response and request) to the obligor by regular mail and retains a copy in the case file.

6. Upon receipt of a signed Request for Administrative Review, enters a SEARCHS case note for the date received and proceeds as follows:

   a. If an administrative review is available according to the criteria in step 2, sends a copy of the request to the OALJ and retains the original in the case file.

Immediately instructs the caseworker to place a hold on disbursement of any offset collections received toward non-TANF arrears.

i. If the request is for an administrative review in Montana, proceeds to step 7.

ii. If the request is for an administrative review in the state (other than Montana) that issued the support order, refers the case to the caseworker for processing under "TRANSFER CASES--OUTGOING," later in this section.

b. If an administrative review is not available, prepares form CS-508.6B, Notice Concerning Administrative Review, denying the request and stating the reason. Mails the original to the obligor; sends a copy to the OALJ, and retains a copy in the case file. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.

7. Prepares form CS-508.6B, Notice Concerning Administrative Review, granting the request and scheduling the review for a date within 5 to 10 working days after the request was received. Manages the remaining procedures in this process to ensure that an administrative review decision is rendered within 45 calendar days after the written request was received.

   Prepares the necessary exhibits. Sends the original Notice Concerning Administrative Review and a copy of each exhibit to the obligor by regular mail. Sends a copy of the notice to the OALJ and retains a copy of the notice and each exhibit for the case file. In a non-TANF case also sends a copy of the notice to the obligee.

   If the obligor requests a postponement for good cause (for example, the obligor needs more time to gather payment receipts), and submits the request in writing, enters a SEARCHS case note and reschedules the review for a later date.

8. On the date scheduled conducts an administrative review by telephone with the obligor. Explains the exhibits, other case documentation, and the CSED position. Accepts arguments, evidence, and documentation from the obligor. Advises the obligor that the CSED will issue a determination in writing within 5 working days after the review.

   If the obligor fails to appear for the review and no good cause for postponement has been presented, makes a decision based on the material in the case record.

9. Within 3 working days after the administrative review, evaluates the case record, makes a decision, and prepares and sends a letter to the obligor notifying him or her of the decision.

   The letter must
   - state how the amount submitted for offset will change, or that the amount will remain in effect as submitted;

- identify the order or judgment on which the amount is based;
- specify the revised or confirmed amount and the period of time it covers, calculated in accordance with Montana law;
- explain how the obligor's arguments, evidence, or documentation did or did not affect the amount determined by the review; and
- list the mailing address of the Office of the Administrative Law Judge (OALJ), and inform the obligor that he or she may request a hearing on the decision by submitting to the OALJ **both** (1) a written request for hearing containing the obligor's case number and social security number, and (2) a copy of the Financial Management Service's Notice of Offset showing that an offset has actually occurred. If an offset has not yet occurred, the letter should further explain that any request for hearing will be denied until an offset has occurred.

Sends a copy of the letter to the OALJ and retains a copy in the case file. In a non-TANF case also sends a copy of the letter to the obligee. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.

Caseworker

10. Implements the determination from the review as follows:

    a. If the review determines that no adjustment to the amount submitted for offset is required, and

        - federal offset is proper with respect to the case facts and any applicable pay sources, removes any hold placed on disbursement of offset collections in step 6a, and takes no further action.

        - federal offset is not proper with respect to the case facts or certain pay sources, takes the necessary steps to suppress the applicable remedies or pay sources; if the determination creates a refundable amount, also proceeds in step 10b as appropriate.

    b. If the review determines that an adjustment to the amount submitted for offset is required, takes the following steps:

        i. Requests the appropriate adjustment from TAPP; includes in the adjustment request the date of the administrative review decision. Does not delay initiation of the adjustment process pending receipt of an offset collection from FMS.

        ii. Immediately notifies the TAPP Supervisor of the review-related adjustment, for purposes of the special weekly update required in section CS 508.3.

TAPP Supervisor

11. Upon being notified of an adjustment in step 10, notifies OCSE of the change in the submitted amount within 10 working days after the review decision. (Note that administrative review adjustments are included in the special "weekly" update in section CS 508.3, despite the slightly longer time frame allowed for reporting these events.)

    [*IN PROGRESS*>> At the time of this writing an enhancement to automatically identify and report these adjustments to OCSE was not in place; until it is, the caseworker and TAPP Supervisor must continue to work together to comply with the federal time frames via manual process.]

    Also, until the special weekly update required in section CS 508.3 is in SEARCHS production, if the adjustment results in a refund of an offset amount, notifies OCSE of the refund within one week of issuance.

Caseworker

12. If a written request for a hearing on the denial in step 6b or the decision in step 9 is received in the regional office, immediately forwards the request to the Office of the Administrative Law Judge for processing. Follows the procedures in section CS 405.20, Federal Offset Hearing.

TRANSFER CASES--OUTGOING (MONTANA SUBMITTED OFFSET)

Caseworker

1. Within 10 calendar days of receiving a request in "MONTANA CASES" step 6a(ii) for a review by the state (not Montana) that issued the support order, takes action in steps 1a and 1b below.

    a. Enters the appropriate transfer indicator on SEARCHS, along with the name of the state to which the case is being transferred, and the appropriate local code. (SEARCHS then identifies the case as a transfer case, and includes it in the next special weekly update file sent to OCSE, as described in section CS 508.3.)

       [IN PROGRESS>> At the time of this writing the enhancement for this indicator was not in place. Until it is, the caseworker must contact the TAPP Supervisor manually and provide the following information: case number and type (TANF/non-TANF), obligor's name and social security number, name of other state with local code, and submitted amount. The TAPP Supervisor will notify OCSE as required.]

    b. Notifies the IV-D agency in the other state (the "transfer state") by initiating a CSENet transaction **and** preparing and sending to the other state's interstate

central registry the following documents:

(1) Form CSE-TRAN, Interstate Transmittal, indicating that the action requested is an administrative review for federal offset.

(2) A copy of the support order and any modifications.

(3) A copy of the payment record or the obligee's affidavit.

(4) A debt computation worksheet, showing how the debt certified for offset was determined.

(5) Copies of any applicable correspondence received from or documents provided by the obligor.

(6) In non-TANF cases, the obligee's address.

c. In non-TANF cases also takes the following actions:

   i. Immediately places a hold on disbursement of any offset collections received.

   ii. Notifies the obligee that Montana has sent the case to another state for federal offset review, and that the obligee's address is being provided to the IV-D agency in the other state.

   iii. Before releasing the obligee's address to the other state, checks SEARCHS for any reason to protect the information. If found, attaches a clear warning with the address that release of the information to another party could result in harm to the obligee or children.

d. Monitors the case for action by the transfer state. If results are not received within 45 calendar days after the interstate referral in step 1b, contacts the transfer state, and proceeds to step 2 when results are obtained.

2. Upon being notified of the results of the review, enters a SEARCHS case note listing the results; in a non-TANF case notifies the obligee of the review results.

   If the transfer state has modified or deleted the case as a result of the administrative review, also takes action in steps 2a and 2b below.

   a. Immediately requests an adjustment to implement the change on SEARCHS. (Note that special reporting via Montana's weekly update file (see section CS 508.3) **is not** required; it is the duty of the state conducting the review to report modifications resulting from the review to OCSE within 10 working days.)

   b. Until the special weekly update required in section CS 508.3 is in SEARCHS

production, if the adjustment creates a refundable amount, separately notifies the TAPP Supervisor of the refund, referencing the adjustment requested in step 2a. Does not delay initiation of the refund process pending receipt of the offset money from FMS. (Note that special reporting via Montana's weekly update file (see section CS 508.3) **is** required; it is the duty of the submitting state to report refunds of federal offsets to OCSE on a weekly basis.)

NOTE: Montana Bound by Transfer State's Decision. A submitting state **must** abide by the decision of the state holding the administrative review, and **must** take all steps necessary for a speedy refund, if one is required as a result of the decision.

TRANSFER CASES--INCOMING (OTHER STATE SUBMITTED OFFSET)

Administrative Support Unit

1. Upon receiving a request from another state for administrative review in a transfer case (usually in the form of an incoming interstate transmittal), forwards the request to the Interstate Regional Manager.

Interstate Regional Manager

2. Upon receiving a request for administrative review from the submitting state in a transfer case, determines whether the support order was issued in Montana. If not, so advises the other state, and takes no further action.

   If the support order was issued in Montana, determines whether the information received with the interstate transmittal is sufficient to conduct a review. If not, sends a letter to the submitting state requesting the necessary information, and takes no further action in this section until the information is provided.

   Proceeds with the review as described in "MONTANA CASES" steps 7 through 12, except for the following differences:

   a. Calculates the 45-day time frame for rendering an administrative review decision beginning with the date the CSED received the request and sufficient information from the submitting state.

   b. Uses the documents received from the submitting state as the exhibits for the review.

   c. Sends to the submitting state a copy of the Notice Concerning Administrative Review. Does not send copies to the obligee.

   d. In conducting the review, explains the submitting state's position. Ensures the decision is based only on the accuracy of the arrears, and whether the arrears are

legally enforceable under Montana state law. Does not base the review on Montana-specific policy considerations, such as whether Montana would have submitted the case for offset under its own procedures.

e. Reports the results of the review to the submitting state via form CSE-TRAN, Interstate Transmittal ("acknowledgments" section), or by sending a copy of the letter to the obligor to the submitting state, or both. Makes sure the submitting state is informed that a federal offset hearing is available to the obligor to dispute the review determination.

f. If Montana is not a responding state in the case, omits steps 10 and 11 with respect to SEARCHS adjustments.

g. If the review results in a change in the amount certified by the submitting state, works with the TAPP Supervisor to submit the modification or deletion to OCSE within 10 working days, listing the other state--not Montana--as the submitting state. (OCSE will accept the one-time modification or deletion from Montana only if (1) the correct submitting state is named in the information submitted by Montana, and (2) the submitting state has previously submitted the case with a "transfer" transaction type, naming Montana as the transfer state.)

[*IN PROGRESS*>> At the time of this writing the special weekly reporting of administrative review adjustments was not automated; until it is, the TAPP Supervisor must manually submit these cases.]

SUPERSEDES

CS 508.4, "Federal Tax Intercept Administrative Reviews--Overview and Policy," November 1, 1989; CS 508.6, "Federal Tax Intercept Administrative Reviews--In-State Reviews," November 1, 1989; CS 508.8, "Federal Tax Intercept Administrative Reviews--Interstate Requests," November 1, 1989.

REFERENCES

45 CFR 303.72

POLICY

Federal regulations governing the federal offset program require that if the CSED receives a complaint from an obligor concerning the CSED's submission of the obligor's case for federal offset, or concerning an offset that has already occurred as a result of the CSED's submission, the CSED must conduct an administrative review "to determine the validity of the complaint." Regulations do not specify the proofs required in, or the opportunities for appeal from, the administrative review. The CSED has chosen to conduct the review at the regional manager level, with appeal available in the form of a federal offset hearing conducted by the CSED Administrative Law Judge. This section addresses only the regional manager's review--technically the only "administrative review" required. Policy and procedures for appeal via CSED federal offset hearings are given in section CS 405.20.

Regulations also state that if a case is submitted for federal offset by a state that did not issue the support order in the case, the obligor may request the administrative review be conducted by the state that issued the order. If the obligor takes this option, the case becomes a "transfer case" for purposes of federal offset administrative review. Montana can be involved in a transfer case in two ways: (1) as the state that submitted the case for offset but did not issue the order, and (2) as the state that issued the order but did not submit the case for offset. This section describes both processes.

Federal regulations for transfer cases require the state with the order to conduct the review and make a decision within 45 days of receiving the request from the submitting state. In non-transfer (Montana submitting) cases, CSED policy adopts the same 45-day requirement for a review decision, although there are no federal time frames for these cases.

In non-TANF cases where an administrative review is requested before money from an offset collection is disbursed to the family, the CSED delays disbursement pending the results of the review.

A federal offset administrative review is not considered an adjudication of the debt for purposes of other CSED enforcement actions.

PROCEDURES

MONTANA CASES (INCLUDING INTERSTATE INITIATING)

Caseworker

1. Upon being contacted by an obligor in response to an OCSE pre-offset notice, a CSED pre-offset statement (obligor bill), or an FMS offset notice, follows procedures in section CS 508.3, Collection by Federal Offset, for preparing and sending a debt computation worksheet, explaining how the debt was determined, and attempting to resolve the obligor's concerns. (If the obligor is responding to an offset submitted by another state, refers the obligor to the other state for relief. If the obligor is requesting a review in Montana because Montana issued the support order in the case, explains the submitting state must send the referral to Montana to initiate the review.)

   If the obligor's concerns are resolved, enters a SEARCHS case note documenting the contact and the resolution. If the obligor's concerns cannot be resolved, proceeds to step 2.

2. Determines whether the federal offset case is eligible for administrative review. Review is available if any of the following circumstances apply:

   (1) The CSED has never performed an administrative review in the case.

   (2) The CSED has previously performed an administrative review in the case, but the obligor is now disputing months that occurred after the latest review.

   EXAMPLE: The CSED submitted arrears of $600 in October, and the obligor requested an administrative review at that time. The review determined the amount was correct. The obligor continued to pay current support for the next six months, but made no payment on arrears, so the case was not modified to OCSE. In April the obligor contested the same $600, **claiming he made a payment on the arrears in January.** The obligor must be granted an administrative review, because he is disputing a month that was not included in the previous review.

   (3) In unusual situations, the obligor is disputing the CSED's (or the federal government's) jurisdiction or authority to enforce by federal offset in the case, and there has been no previous administrative review where the obligor could have raised this objection. For example, the obligor is disputing the CSED's authority to enforce against a pay source that is protected by a court-ordered stay on the collections, or that comes under the exclusive jurisdiction of a Native American tribe, and the pay source had not been offset at the time of any previous review. (Note that it should be possible to resolve most of these claims before they get to administrative review.)

   If the case is eligible for administrative review, proceeds to step 3. If the case is not

eligible for administrative review, explains a review is not available and proceeds in step 2a or 2b below.

a. If the obligor accepts this determination, enters a SEARCHS case note documenting the denial and the reason, and takes no further action.

b. If the obligor insists on a review, proceeds to step 3. (Unless new information is provided by the obligor in the written request, the request will be denied in step 6, allowing the obligor to request a hearing on the denial.)

3. Informs the obligor an administrative review is available, and explains the following aspects of the review process as applicable:

   (1) The review must be requested in writing, using the Request for Administrative Review provided by the CSED or an equivalent document.

   (2) Montana law will be used to interpret the support order upon which the offset is based.

   (3) If the support order was issued by another state, the obligor may request that Montana forward the case to that state for administrative review.

   (4) Any debt for which the CSED has issued and resolved a notice in another action (such as income withholding) will be automatically confirmed during the administrative review without further examination.

   (5) In a non-TANF case the CSED will inform the obligee of the time and place of the review.

4. Prepares form CS-508.6A, Response to Inquiry about Federal Offset and Request for Administrative Review. Refers the case, with the prepared form, to the regional manager. (If the caseworker assigned to the case is the regional manager, the regional manager should refer the case to the CSED staff attorney, who becomes the "designee.")

Regional Manager or Designee

5. Reviews and signs the response letter portion of the form; sends the entire original form (response and request) to the obligor by regular mail and retains a copy in the case file.

6. Upon receipt of a signed Request for Administrative Review, enters a SEARCHS case note for the date received and proceeds as follows:

   a. If an administrative review is available according to the criteria in step 2, sends a copy of the request to the OALJ and retains the original in the case file.

Immediately instructs the caseworker to place a hold on disbursement of any offset collections received toward non-TANF arrears.

i. If the request is for an administrative review in Montana, proceeds to step 7.

ii. If the request is for an administrative review in the state (other than Montana) that issued the support order, refers the case to the caseworker for processing under "TRANSFER CASES--OUTGOING," later in this section.

b. If an administrative review is not available, prepares form CS-508.6B, Notice Concerning Administrative Review, denying the request and stating the reason. Mails the original to the obligor; sends a copy to the OALJ, and retains a copy in the case file. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.

7. Prepares form CS-508.6B, Notice Concerning Administrative Review, granting the request and scheduling the review for a date within 5 to 10 working days after the request was received. Manages the remaining procedures in this process to ensure that an administrative review decision is rendered within 45 calendar days after the written request was received.

   Prepares the necessary exhibits. Sends the original Notice Concerning Administrative Review and a copy of each exhibit to the obligor by regular mail. Sends a copy of the notice to the OALJ and retains a copy of the notice and each exhibit for the case file. In a non-TANF case also sends a copy of the notice to the obligee.

   If the obligor requests a postponement for good cause (for example, the obligor needs more time to gather payment receipts), and submits the request in writing, enters a SEARCHS case note and reschedules the review for a later date.

8. On the date scheduled conducts an administrative review by telephone with the obligor. Explains the exhibits, other case documentation, and the CSED position. Accepts arguments, evidence, and documentation from the obligor. Advises the obligor that the CSED will issue a determination in writing within 5 working days after the review.

   If the obligor fails to appear for the review and no good cause for postponement has been presented, makes a decision based on the material in the case record.

9. Within 3 working days after the administrative review, evaluates the case record, makes a decision, and prepares and sends a letter to the obligor notifying him or her of the decision.

   The letter must
   - state how the amount submitted for offset will change, or that the amount will remain in effect as submitted;

- identify the order or judgment on which the amount is based;
- specify the revised or confirmed amount and the period of time it covers, calculated in accordance with Montana law;
- explain how the obligor's arguments, evidence, or documentation did or did not affect the amount determined by the review; and
- list the mailing address of the Office of the Administrative Law Judge (OALJ), and inform the obligor that he or she may request a hearing on the decision by submitting to the OALJ **both** (1) a written request for hearing containing the obligor's case number and social security number, and (2) a copy of the Financial Management Service's Notice of Offset showing that an offset has actually occurred. If an offset has not yet occurred, the letter should further explain that any request for hearing will be denied until an offset has occurred.

Sends a copy of the letter to the OALJ and retains a copy in the case file. In a non-TANF case also sends a copy of the letter to the obligee. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.

Caseworker

10. Implements the determination from the review as follows:

    a. If the review determines that no adjustment to the amount submitted for offset is required, and

        - federal offset is proper with respect to the case facts and any applicable pay sources, removes any hold placed on disbursement of offset collections in step 6a, and takes no further action.

        - federal offset is not proper with respect to the case facts or certain pay sources, takes the necessary steps to suppress the applicable remedies or pay sources; if the determination creates a refundable amount, also proceeds in step 10b as appropriate.

    b. If the review determines that an adjustment to the amount submitted for offset is required, takes the following steps:

        i. Requests the appropriate adjustment from TAPP; includes in the adjustment request the date of the administrative review decision. Does not delay initiation of the adjustment process pending receipt of an offset collection from FMS.

        ii. Immediately notifies the TAPP Supervisor of the review-related adjustment, for purposes of the special weekly update required in section CS 508.3.

TAPP Supervisor

11. Upon being notified of an adjustment in step 10, notifies OCSE of the change in the submitted amount within 10 working days after the review decision. (Note that administrative review adjustments are included in the special "weekly" update in section CS 508.3, despite the slightly longer time frame allowed for reporting these events.)

    [*IN PROGRESS*>> At the time of this writing an enhancement to automatically identify and report these adjustments to OCSE was not in place; until it is, the caseworker and TAPP Supervisor must continue to work together to comply with the federal time frames via manual process.]

    Also, until the special weekly update required in section CS 508.3 is in SEARCHS production, if the adjustment results in a refund of an offset amount, notifies OCSE of the refund within one week of issuance.

Caseworker

12. If a written request for a hearing on the denial in step 6b or the decision in step 9 is received in the regional office, immediately forwards the request to the Office of the Administrative Law Judge for processing. Follows the procedures in section CS 405.20, Federal Offset Hearing.

TRANSFER CASES--OUTGOING (MONTANA SUBMITTED OFFSET)

Caseworker

1. Within 10 calendar days of receiving a request in "MONTANA CASES" step 6a(ii) for a review by the state (not Montana) that issued the support order, takes action in steps 1a and 1b below.

    a. Enters the appropriate transfer indicator on SEARCHS, along with the name of the state to which the case is being transferred, and the appropriate local code. (SEARCHS then identifies the case as a transfer case, and includes it in the next special weekly update file sent to OCSE, as described in section CS 508.3.)

       [*IN PROGRESS*>> At the time of this writing the enhancement for this indicator was not in place. Until it is, the caseworker must contact the TAPP Supervisor manually and provide the following information: case number and type (TANF/non-TANF), obligor's name and social security number, name of other state with local code, and submitted amount. The TAPP Supervisor will notify OCSE as required.]

    b. Notifies the IV-D agency in the other state (the "transfer state") by initiating a CSENet transaction **and** preparing and sending to the other state's interstate

central registry the following documents:

(1) Form CSE-TRAN, Interstate Transmittal, indicating that the action requested is an administrative review for federal offset.

(2) A copy of the support order and any modifications.

(3) A copy of the payment record or the obligee's affidavit.

(4) A debt computation worksheet, showing how the debt certified for offset was determined.

(5) Copies of any applicable correspondence received from or documents provided by the obligor.

(6) In non-TANF cases, the obligee's address.

c. In non-TANF cases also takes the following actions:

   i. Immediately places a hold on disbursement of any offset collections received.

   ii. Notifies the obligee that Montana has sent the case to another state for federal offset review, and that the obligee's address is being provided to the IV-D agency in the other state.

   iii. Before releasing the obligee's address to the other state, checks SEARCHS for any reason to protect the information. If found, attaches a clear warning with the address that release of the information to another party could result in harm to the obligee or children.

d. Monitors the case for action by the transfer state. If results are not received within 45 calendar days after the interstate referral in step 1b, contacts the transfer state, and proceeds to step 2 when results are obtained.

2. Upon being notified of the results of the review, enters a SEARCHS case note listing the results; in a non-TANF case notifies the obligee of the review results.

   If the transfer state has modified or deleted the case as a result of the administrative review, also takes action in steps 2a and 2b below.

   a. Immediately requests an adjustment to implement the change on SEARCHS. (Note that special reporting via Montana's weekly update file (see section CS 508.3) **is not** required; it is the duty of the state conducting the review to report modifications resulting from the review to OCSE within 10 working days.)

   b. Until the special weekly update required in section CS 508.3 is in SEARCHS

production, if the adjustment creates a refundable amount, separately notifies the TAPP Supervisor of the refund, referencing the adjustment requested in step 2a. Does not delay initiation of the refund process pending receipt of the offset money from FMS. (Note that special reporting via Montana's weekly update file (see section CS 508.3) **is** required; it is the duty of the submitting state to report refunds of federal offsets to OCSE on a weekly basis.)

NOTE: Montana Bound by Transfer State's Decision. A submitting state **must** abide by the decision of the state holding the administrative review, and **must** take all steps necessary for a speedy refund, if one is required as a result of the decision.

TRANSFER CASES--INCOMING (OTHER STATE SUBMITTED OFFSET)

Administrative Support Unit

1. Upon receiving a request from another state for administrative review in a transfer case (usually in the form of an incoming interstate transmittal), forwards the request to the Interstate Regional Manager.

Interstate Regional Manager

2. Upon receiving a request for administrative review from the submitting state in a transfer case, determines whether the support order was issued in Montana. If not, so advises the other state, and takes no further action.

   If the support order was issued in Montana, determines whether the information received with the interstate transmittal is sufficient to conduct a review. If not, sends a letter to the submitting state requesting the necessary information, and takes no further action in this section until the information is provided.

   Proceeds with the review as described in "MONTANA CASES" steps 7 through 12, except for the following differences:

   a. Calculates the 45-day time frame for rendering an administrative review decision beginning with the date the CSED received the request and sufficient information from the submitting state.

   b. Uses the documents received from the submitting state as the exhibits for the review.

   c. Sends to the submitting state a copy of the Notice Concerning Administrative Review. Does not send copies to the obligee.

   d. In conducting the review, explains the submitting state's position. Ensures the decision is based only on the accuracy of the arrears, and whether the arrears are

legally enforceable under Montana state law. Does not base the review on Montana-specific policy considerations, such as whether Montana would have submitted the case for offset under its own procedures.

e. Reports the results of the review to the submitting state via form CSE-TRAN, Interstate Transmittal ("acknowledgments" section), or by sending a copy of the letter to the obligor to the submitting state, or both. Makes sure the submitting state is informed that a federal offset hearing is available to the obligor to dispute the review determination.

f. If Montana is not a responding state in the case, omits steps 10 and 11 with respect to SEARCHS adjustments.

g. If the review results in a change in the amount certified by the submitting state, works with the TAPP Supervisor to submit the modification or deletion to OCSE within 10 working days, listing the other state--not Montana--as the submitting state. (OCSE will accept the one-time modification or deletion from Montana only if (1) the correct submitting state is named in the information submitted by Montana, and (2) the submitting state has previously submitted the case with a "transfer" transaction type, naming Montana as the transfer state.)

   [*IN PROGRESS*>> At the time of this writing the special weekly reporting of administrative review adjustments was not automated; until it is, the TAPP Supervisor must manually submit these cases.]

SUPERSEDES

CS 508.4, "Federal Tax Intercept Administrative Reviews--Overview and Policy," November 1, 1989; CS 508.6, "Federal Tax Intercept Administrative Reviews--In-State Reviews," November 1, 1989; CS 508.8, "Federal Tax Intercept Administrative Reviews--Interstate Requests," November 1, 1989.

REFERENCES

45 CFR 303.72

POLICY

Federal regulations governing the federal offset program require that if the CSED receives a complaint from an obligor concerning the CSED's submission of the obligor's case for federal offset, or concerning an offset that has already occurred as a result of the CSED's submission, the CSED must conduct an administrative review "to determine the validity of the complaint." Regulations do not specify the proofs required in, or the opportunities for appeal from, the administrative review. The CSED has chosen to conduct the review at the regional manager level, with appeal available in the form of a federal offset hearing conducted by the CSED Administrative Law Judge. This section addresses only the regional manager's review--technically the only "administrative review" required. Policy and procedures for appeal via CSED federal offset hearings are given in section CS 405.20.

Regulations also state that if a case is submitted for federal offset by a state that did not issue the support order in the case, the obligor may request the administrative review be conducted by the state that issued the order. If the obligor takes this option, the case becomes a "transfer case" for purposes of federal offset administrative review. Montana can be involved in a transfer case in two ways: (1) as the state that submitted the case for offset but did not issue the order, and (2) as the state that issued the order but did not submit the case for offset. This section describes both processes.

Federal regulations for transfer cases require the state with the order to conduct the review and make a decision within 45 days of receiving the request from the submitting state. In non-transfer (Montana submitting) cases, CSED policy adopts the same 45-day requirement for a review decision, although there are no federal time frames for these cases.

In non-TANF cases where an administrative review is requested before money from an offset collection is disbursed to the family, the CSED delays disbursement pending the results of the review.

A federal offset administrative review is not considered an adjudication of the debt for purposes of other CSED enforcement actions.

PROCEDURES

MONTANA CASES (INCLUDING INTERSTATE INITIATING)

Caseworker

1. Upon being contacted by an obligor in response to an OCSE pre-offset notice, a CSED pre-offset statement (obligor bill), or an FMS offset notice, follows procedures in section CS 508.3, Collection by Federal Offset, for preparing and sending a debt computation worksheet, explaining how the debt was determined, and attempting to resolve the obligor's concerns. (If the obligor is responding to an offset submitted by another state, refers the obligor to the other state for relief. If the obligor is requesting a review in Montana because Montana issued the support order in the case, explains the submitting state must send the referral to Montana to initiate the review.)

   If the obligor's concerns are resolved, enters a SEARCHS case note documenting the contact and the resolution. If the obligor's concerns cannot be resolved, proceeds to step 2.

2. Determines whether the federal offset case is eligible for administrative review. Review is available if any of the following circumstances apply:

   (1) The CSED has never performed an administrative review in the case.

   (2) The CSED has previously performed an administrative review in the case, but the obligor is now disputing months that occurred after the latest review.

   EXAMPLE: The CSED submitted arrears of $600 in October, and the obligor requested an administrative review at that time. The review determined the amount was correct. The obligor continued to pay current support for the next six months, but made no payment on arrears, so the case was not modified to OCSE. In April the obligor contested the same $600, **claiming he made a payment on the arrears in January.** The obligor must be granted an administrative review, because he is disputing a month that was not included in the previous review.

   (3) In unusual situations, the obligor is disputing the CSED's (or the federal government's) jurisdiction or authority to enforce by federal offset in the case, and there has been no previous administrative review where the obligor could have raised this objection. For example, the obligor is disputing the CSED's authority to enforce against a pay source that is protected by a court-ordered stay on the collections, or that comes under the exclusive jurisdiction of a Native American tribe, and the pay source had not been offset at the time of any previous review. (Note that it should be possible to resolve most of these claims before they get to administrative review.)

   If the case is eligible for administrative review, proceeds to step 3. If the case is not

eligible for administrative review, explains a review is not available and proceeds in step 2a or 2b below.

a. If the obligor accepts this determination, enters a SEARCHS case note documenting the denial and the reason, and takes no further action.

b. If the obligor insists on a review, proceeds to step 3. (Unless new information is provided by the obligor in the written request, the request will be denied in step 6, allowing the obligor to request a hearing on the denial.)

3. Informs the obligor an administrative review is available, and explains the following aspects of the review process as applicable:

   (1) The review must be requested in writing, using the Request for Administrative Review provided by the CSED or an equivalent document.

   (2) Montana law will be used to interpret the support order upon which the offset is based.

   (3) If the support order was issued by another state, the obligor may request that Montana forward the case to that state for administrative review.

   (4) Any debt for which the CSED has issued and resolved a notice in another action (such as income withholding) will be automatically confirmed during the administrative review without further examination.

   (5) In a non-TANF case the CSED will inform the obligee of the time and place of the review.

4. Prepares form CS-508.6A, Response to Inquiry about Federal Offset and Request for Administrative Review. Refers the case, with the prepared form, to the regional manager. (If the caseworker assigned to the case is the regional manager, the regional manager should refer the case to the CSED staff attorney, who becomes the "designee.")

Regional Manager or Designee

5. Reviews and signs the response letter portion of the form; sends the entire original form (response and request) to the obligor by regular mail and retains a copy in the case file.

6. Upon receipt of a signed Request for Administrative Review, enters a SEARCHS case note for the date received and proceeds as follows:

   a. If an administrative review is available according to the criteria in step 2, sends a copy of the request to the OALJ and retains the original in the case file.

Immediately instructs the caseworker to place a hold on disbursement of any offset collections received toward non-TANF arrears.

i. If the request is for an administrative review in Montana, proceeds to step 7.

ii. If the request is for an administrative review in the state (other than Montana) that issued the support order, refers the case to the caseworker for processing under "TRANSFER CASES--OUTGOING," later in this section.

b. If an administrative review is not available, prepares form CS-508.6B, Notice Concerning Administrative Review, denying the request and stating the reason. Mails the original to the obligor; sends a copy to the OALJ, and retains a copy in the case file. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.

7. Prepares form CS-508.6B, Notice Concerning Administrative Review, granting the request and scheduling the review for a date within 5 to 10 working days after the request was received. Manages the remaining procedures in this process to ensure that an administrative review decision is rendered within 45 calendar days after the written request was received.

   Prepares the necessary exhibits. Sends the original Notice Concerning Administrative Review and a copy of each exhibit to the obligor by regular mail. Sends a copy of the notice to the OALJ and retains a copy of the notice and each exhibit for the case file. In a non-TANF case also sends a copy of the notice to the obligee.

   If the obligor requests a postponement for good cause (for example, the obligor needs more time to gather payment receipts), and submits the request in writing, enters a SEARCHS case note and reschedules the review for a later date.

8. On the date scheduled conducts an administrative review by telephone with the obligor. Explains the exhibits, other case documentation, and the CSED position. Accepts arguments, evidence, and documentation from the obligor. Advises the obligor that the CSED will issue a determination in writing within 5 working days after the review.

   If the obligor fails to appear for the review and no good cause for postponement has been presented, makes a decision based on the material in the case record.

9. Within 3 working days after the administrative review, evaluates the case record, makes a decision, and prepares and sends a letter to the obligor notifying him or her of the decision.

   The letter must
   - state how the amount submitted for offset will change, or that the amount will remain in effect as submitted;

- identify the order or judgment on which the amount is based;
- specify the revised or confirmed amount and the period of time it covers, calculated in accordance with Montana law;
- explain how the obligor's arguments, evidence, or documentation did or did not affect the amount determined by the review; and
- list the mailing address of the Office of the Administrative Law Judge (OALJ), and inform the obligor that he or she may request a hearing on the decision by submitting to the OALJ **both** (1) a written request for hearing containing the obligor's case number and social security number, and (2) a copy of the Financial Management Service's Notice of Offset showing that an offset has actually occurred. If an offset has not yet occurred, the letter should further explain that any request for hearing will be denied until an offset has occurred.

Sends a copy of the letter to the OALJ and retains a copy in the case file. In a non-TANF case also sends a copy of the letter to the obligee. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.

Caseworker

10. Implements the determination from the review as follows:

    a. If the review determines that no adjustment to the amount submitted for offset is required, and

        - federal offset is proper with respect to the case facts and any applicable pay sources, removes any hold placed on disbursement of offset collections in step 6a, and takes no further action.

        - federal offset is not proper with respect to the case facts or certain pay sources, takes the necessary steps to suppress the applicable remedies or pay sources; if the determination creates a refundable amount, also proceeds in step 10b as appropriate.

    b. If the review determines that an adjustment to the amount submitted for offset is required, takes the following steps:

        i. Requests the appropriate adjustment from TAPP; includes in the adjustment request the date of the administrative review decision. Does not delay initiation of the adjustment process pending receipt of an offset collection from FMS.

        ii. Immediately notifies the TAPP Supervisor of the review-related adjustment, for purposes of the special weekly update required in section CS 508.3.

TAPP Supervisor

11. Upon being notified of an adjustment in step 10, notifies OCSE of the change in the submitted amount within 10 working days after the review decision. (Note that administrative review adjustments are included in the special "weekly" update in section CS 508.3, despite the slightly longer time frame allowed for reporting these events.)

    [*IN PROGRESS*>> At the time of this writing an enhancement to automatically identify and report these adjustments to OCSE was not in place; until it is, the caseworker and TAPP Supervisor must continue to work together to comply with the federal time frames via manual process.]

    Also, until the special weekly update required in section CS 508.3 is in SEARCHS production, if the adjustment results in a refund of an offset amount, notifies OCSE of the refund within one week of issuance.

Caseworker

12. If a written request for a hearing on the denial in step 6b or the decision in step 9 is received in the regional office, immediately forwards the request to the Office of the Administrative Law Judge for processing. Follows the procedures in section CS 405.20, Federal Offset Hearing.

TRANSFER CASES--OUTGOING (MONTANA SUBMITTED OFFSET)

Caseworker

1. Within 10 calendar days of receiving a request in "MONTANA CASES" step 6a(ii) for a review by the state (not Montana) that issued the support order, takes action in steps 1a and 1b below.

    a. Enters the appropriate transfer indicator on SEARCHS, along with the name of the state to which the case is being transferred, and the appropriate local code. (SEARCHS then identifies the case as a transfer case, and includes it in the next special weekly update file sent to OCSE, as described in section CS 508.3.)

    [*IN PROGRESS*>> At the time of this writing the enhancement for this indicator was not in place. Until it is, the caseworker must contact the TAPP Supervisor manually and provide the following information: case number and type (TANF/non-TANF), obligor's name and social security number, name of other state with local code, and submitted amount. The TAPP Supervisor will notify OCSE as required.]

    b. Notifies the IV-D agency in the other state (the "transfer state") by initiating a CSENet transaction **and** preparing and sending to the other state's interstate

central registry the following documents:

(1) Form CSE-TRAN, Interstate Transmittal, indicating that the action requested is an administrative review for federal offset.

(2) A copy of the support order and any modifications.

(3) A copy of the payment record or the obligee's affidavit.

(4) A debt computation worksheet, showing how the debt certified for offset was determined.

(5) Copies of any applicable correspondence received from or documents provided by the obligor.

(6) In non-TANF cases, the obligee's address.

c. In non-TANF cases also takes the following actions:

i. Immediately places a hold on disbursement of any offset collections received.

ii. Notifies the obligee that Montana has sent the case to another state for federal offset review, and that the obligee's address is being provided to the IV-D agency in the other state.

iii. Before releasing the obligee's address to the other state, checks SEARCHS for any reason to protect the information. If found, attaches a clear warning with the address that release of the information to another party could result in harm to the obligee or children.

d. Monitors the case for action by the transfer state. If results are not received within 45 calendar days after the interstate referral in step 1b, contacts the transfer state, and proceeds to step 2 when results are obtained.

2. Upon being notified of the results of the review, enters a SEARCHS case note listing the results; in a non-TANF case notifies the obligee of the review results.

If the transfer state has modified or deleted the case as a result of the administrative review, also takes action in steps 2a and 2b below.

a. Immediately requests an adjustment to implement the change on SEARCHS. (Note that special reporting via Montana's weekly update file (see section CS 508.3) **is not** required; it is the duty of the state conducting the review to report modifications resulting from the review to OCSE within 10 working days.)

b. Until the special weekly update required in section CS 508.3 is in SEARCHS

production, if the adjustment creates a refundable amount, separately notifies the TAPP Supervisor of the refund, referencing the adjustment requested in step 2a. Does not delay initiation of the refund process pending receipt of the offset money from FMS. (Note that special reporting via Montana's weekly update file (see section CS 508.3) **is** required; it is the duty of the submitting state to report refunds of federal offsets to OCSE on a weekly basis.)

NOTE: Montana Bound by Transfer State's Decision. A submitting state **must** abide by the decision of the state holding the administrative review, and **must** take all steps necessary for a speedy refund, if one is required as a result of the decision.

TRANSFER CASES--INCOMING (OTHER STATE SUBMITTED OFFSET)

Administrative Support Unit

1. Upon receiving a request from another state for administrative review in a transfer case (usually in the form of an incoming interstate transmittal), forwards the request to the Interstate Regional Manager.

Interstate Regional Manager

2. Upon receiving a request for administrative review from the submitting state in a transfer case, determines whether the support order was issued in Montana. If not, so advises the other state, and takes no further action.

   If the support order was issued in Montana, determines whether the information received with the interstate transmittal is sufficient to conduct a review. If not, sends a letter to the submitting state requesting the necessary information, and takes no further action in this section until the information is provided.

   Proceeds with the review as described in "MONTANA CASES" steps 7 through 12, except for the following differences:

   a. Calculates the 45-day time frame for rendering an administrative review decision beginning with the date the CSED received the request and sufficient information from the submitting state.

   b. Uses the documents received from the submitting state as the exhibits for the review.

   c. Sends to the submitting state a copy of the Notice Concerning Administrative Review. Does not send copies to the obligee.

   d. In conducting the review, explains the submitting state's position. Ensures the decision is based only on the accuracy of the arrears, and whether the arrears are

legally enforceable under Montana state law. Does not base the review on Montana-specific policy considerations, such as whether Montana would have submitted the case for offset under its own procedures.

e. Reports the results of the review to the submitting state via form CSE-TRAN, Interstate Transmittal ("acknowledgments" section), or by sending a copy of the letter to the obligor to the submitting state, or both. Makes sure the submitting state is informed that a federal offset hearing is available to the obligor to dispute the review determination.

f. If Montana is not a responding state in the case, omits steps 10 and 11 with respect to SEARCHS adjustments.

g. If the review results in a change in the amount certified by the submitting state, works with the TAPP Supervisor to submit the modification or deletion to OCSE within 10 working days, listing the other state--not Montana--as the submitting state. (OCSE will accept the one-time modification or deletion from Montana only if (1) the correct submitting state is named in the information submitted by Montana, and (2) the submitting state has previously submitted the case with a "transfer" transaction type, naming Montana as the transfer state.)

[*IN PROGRESS*>> At the time of this writing the special weekly reporting of administrative review adjustments was not automated; until it is, the TAPP Supervisor must manually submit these cases.]

SUPERSEDES

CS 508.7, Passport Denial and Revocation, May 23, 1999.

REFERENCES

42 U.S.C. §652(k); OCSE-AT-99-14; OCSE Federal Offset Program User Guide, March 2003.

POLICY

Passport Denial/Revocation Remedy. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 established passport denial as a remedy for the enforcement of child support arrears. Under this remedy the U.S. Secretary of State must refuse to issue a U.S. passport to an obligor owing arrears in an amount exceeding $5,000, and may revoke, restrict, or limit a passport issued previously to that obligor.

At the time of this writing the revocation mechanism was limited to situations where the Department of State (DoS) had the existing passport in hand (for example, DoS was processing the passport for renewal or change, or in support of an application for a child). Until full revocation capability is added, the passport denial remedy will have no enforcement effect in cases where the obligor is currently in possession of a valid passport.

OCSE Certification to DoS. The passport denial remedy operates by "piggybacking" on the federal offset process described in section CS 508.3. The federal Office of Child Support Enforcement (OCSE) uses a state's cases submitted for federal offset to identify obligors whose total TANF and non-TANF arrears exceed $5,000. OCSE certifies these obligors to DoS for passport denial; if 30 days have not elapsed since an obligor's pre-offset notice was sent (see section CS 508.3), OCSE delays certifying the obligor until that time has expired. Note that an obligor's arrears must exceed $5,000 for a single state; arrears for one state that do not reach the threshold will not be added to arrears from another.

Conditions for Decertification. OCSE does not clear or "decertify" an obligor with DoS until the obligor is decertified for every state for which he/she was previously certified. An obligor is decertified for a submitting state if (1) the state deletes the obligor's previously submitted assigned and unassigned arrears, or (2) the state releases the obligor from the passport denial remedy. OCSE will **not** automatically decertify an obligor for a state just because arrears drop to $5,000 or below.

"Paid in Full" Defined. A state must delete the obligor's arrears if both assigned and unassigned amounts fall below the respective thresholds for federal offset given in section CS 508.3 ($150 for assigned arrears, $500 for unassigned arrears). In the remainder of this section the phrase "paid in full for purposes of federal offset" means paid down to levels below the thresholds, so that the obligor's cases were or should have been deleted from the federal offset process.

Releasing an Obligor--Emergency Request. States can release an obligor from the passport denial remedy by submitting a passport denial exclusion for the obligor (see

Releasing an Obligor--Exclusion), or by submitting an emergency request to OCSE. Emergency requests are limited to life-or-death situations involving the obligor's immediate family, or cases that were erroneously submitted. Criteria for determining a life-or-death situation are given in some detail by OCSE (see Chart 5-1 at the end of this section).

Criteria for identifying an erroneously submitted case are more general. The CSED will submit an emergency request on the basis of erroneous submission when one of the following conditions applies:

(1) Mistaken identity–A person who is not a CSED obligor is mistakenly submitted for federal offset. (This can occur when the CSED submits an incorrect social security number for a CSED obligor, and the SSN actually belongs to another person who is not a CSED obligor.)

(2) Arrears never exceeded $5,000--The total arrears amount submitted to OCSE for federal offset is or was in error, and (a) and (b) below apply:
  (a) The total arrears actually owed never exceeded $5,000 (or total arrears exceeded $5,000 but were later paid in full for purposes of federal offset.)
  (b) There is an emergency situation in which the obligor must obtain a passport or suffer harsh consequences.

Written verification of the non-obligor's identity in (1) or of the miscalculation of arrears in (2) is required. Documentation of the emergency situation in (2)(b) is also required.

ADMINISTRATOR'S EXCEPTION: In extremely rare situations the CSED Administrator or designee may allow a request for emergency withdrawal in the absence of a life-or-death situation or erroneous submission if (1) a passport emergency exists and (2) negotiation of passport relief would be beneficial to the overall enforcement of the case.

Releasing an Obligor--Exclusion. Exclusion is the standard method for releasing an obligor from passport denial. However, passport denial is a mandatory federal remedy, and states may not refuse to participate in the remedy by simply excluding all submitted cases. Exclusions are available only on a case-by-case basis according to the specific policy established by the submitting state.

Montana is a "zero tolerance" state for purposes of passport exclusion: it does **not** exclude the obligor from passport denial just because total arrears decrease to $5,000 or below. The CSED grants an exclusion (while maintaining submission of the arrears for other remedies) **only if the total arrears amount submitted to OCSE for federal offset is or was in error and**

- total arrears actually owed never exceeded $5,000 (or total arrears exceeded $5,000 but were later paid in full for purposes of federal offset; now additional arrears (not exceeding $5,000) have accrued); and
- the obligor does not qualify for emergency relief (see Releasing an Obligor--Emergency Request).

The CSED requires proof of any facts not already documented on SEARCHS or contained in the case file that support the above assertions.

ADMINISTRATOR'S EXCEPTION: In extremely rare situations the CSED Administrator or designee may grant an exclusion where the arrears amount was never in error, but where negotiation of passport relief would be beneficial to the overall enforcement of the case.

Removing an Exclusion. If after an exclusion is submitted to OCSE the situation changes and the exclusion no longer applies, the CSED may submit another transaction to OCSE removing the exclusion. The CSED will remove an exclusion if (1) the exclusion was based on an erroneous submission of arrears over $5,000, and arrears are now calculated to exceed $5,000, or (2) the exclusion was based on an Administrator's exception and the obligor fails to comply with any terms set for the exception, or (3) the exclusion indicator was placed on the file by OCSE while implementing an emergency request, and the basis for the emergency no longer exists. (Note that the removal transaction may be ineffective if the obligor has already obtained a passport on the basis of the exclusion. However, the CSED submits the transaction to ensure the passport can be denied or revoked in the future if it comes into the hands of DoS.)

PROCEDURES

SEARCHS

1. **Submission for passport denial.** Identifies and submits cases to OCSE for federal offset via the Case Submission and Update File described in section CS 508.3. The file includes the TANF and non-TANF arrears amounts used to determine certification for passport denial, but does not include passport denial exclusion indicators.

   At the time of this writing SEARCHS did not have the capability to enter a remedy-specific exclusion for a specific obligor. See step 10 for non-SEARCHS, on-line exclusions for passport denial.

OCSE

2. **Certification/decertification to DoS.** Upon receipt of a submitting state's Case Submission and Update File, certifies or decertifies obligors for passport denial in steps 2a through 2c below.

   a. Weekly identifies cases in which the obligor's child support-related passport eligibility has **changed** for the submitting state since the previous submission. Passport eligibility is determined as follows:

      - The obligor is **not eligible** for a passport if
        - total TANF and non-TANF arrears exceed $5,000, or previously exceeded $5,000 and are still submitted for a positive amount, and
        - the state has not released the obligor--by exclusion or emergency withdrawal in step 7 or 8--from the passport denial remedy for those arrears.
      - The obligor is **eligible** for a passport if total arrears submitted for offset have

never exceeded $5,000.

- The obligor is **eligible** for a passport if total arrears submitted for offset have exceeded $5,000, but the state has
  - released the obligor--by exclusion or emergency withdrawal in step 7 or 8 --from the passport denial remedy for those arrears, or
  - deleted the obligor's total TANF and non-TANF arrears from the state's submission because the amounts have fallen below the federal offset thresholds.

b. For each obligor identified in step 2a whose status has changed to "not eligible," checks the date of the pre-offset notice issued to the obligor (see section CS 508.3) and, if fewer than 30 days have elapsed, does not proceed to step 2c until the notice period has expired.

c. Creates a file containing the obligors identified in step 2a and transmits the file to the U.S. Department of State (DoS). The file **certifies** obligors who have lost eligibility and whose pre-offset notice periods have expired. The file **decertifies** obligors who have regained eligibility. (OCSE decertifies an obligor only if the obligor is eligible, or is being changed to eligible, for all submitting states.)

U.S. Department of State (DoS)

3. **Receipt of certification/decertification file from OCSE.** Upon receipt of the weekly file from OCSE (or of an emergency withdrawal submitted outside the weekly process in step 12b), updates the Passport Services central data base as follows:

   a. For each obligor being certified by OCSE, sets a "deny" indicator. If the obligor currently holds a U.S. passport, proceeds to step 5; otherwise, proceeds to step 4.

   b. For each obligor being decertified by OCSE, removes the "deny" indicator, and follows standard agency procedures for any subsequent passport application received from the obligor. (Does not take special steps to notify a previously denied obligor that he or she may now reapply.) See OCSE User Guide section 5-6, "Guidelines for Obtaining a Passport After Clearance of OCSE Denial," copied at the end of this section.

4. **Passport denial.** Upon receipt of an application for a U.S. passport from an obligor flagged for denial on the basis of child support, denies the application and sends a letter to the obligor explaining the reason for the denial. (A sample of the denial letter is included at the end of this section.) The letter also informs the applicant (the obligor) that he or she may reapply when DoS is notified by the proper agency that the child support arrearage is satisfied. Takes no further action until notified by OCSE that the obligor is decertified; then proceeds in step 3b.

5. **Passport revocation.** Upon being notified in step 3 that an obligor who currently holds a U.S. passport has been certified by OCSE, revokes the passport according to

standard agency procedures **only** if the existing passport is currently in the possession of a passport agency or DoS (see POLICY, Passport Denial/Revocation).

At the time of this writing the mechanism for revocation of a passport physically held by the obligor was not operational.

Caseworker

6. **Obligor objection to passport denial.** Upon being contacted by an obligor or other individual whose application for a passport has been denied in step 4, or whose passport has been revoked in step 5, explains the passport denial/revocation process and the threshold of $5,000, and identifies the person's specific complaint. Proceeds in steps 6a through 6d as applicable.

   NOTE 1: Coordination with Supervisor. Because the supervisor must approve any exclusion or emergency withdrawal negotiated in steps 6a through 6c, it is important that the caseworker consult with the supervisor before completing negotiations with the obligor.

   NOTE 2: All States Must Decertify. In a case where the CSED agrees in steps 6a through 6c to submit an exclusion or an emergency request, it is important that the obligor understand that the passport will remain subject to denial as long as **any** state has certified the obligor for this remedy. The obligor must regain eligibility in all states before OCSE will decertify him or her to DoS.

   NOTE 3: Time Frames for Return of Eligibility. If exclusion applies, the obligor can expect to regain passport eligibility within approximately 8 business days after the date the CSED submits the exclusion. If emergency relief applies, the obligor can expect to regain passport eligibility within approximately 24 hours after the date the request for emergency withdrawal is approved by OCSE/DoS.

   a. **Mistaken identity.** If a non-obligor is wrongfully denied a passport on the basis of child support (for example, an individual whose social security number was incorrectly attached to a CSED obligor), verifies the person's identity, and pursues return of the individual's eligibility through the emergency relief option in step 8. This particular cause for relief is limited to cases of mistaken identity, where the individual has never had a child support case submitted for federal offset.

   b. **Arrears in dispute.** If the obligor claims he or she should not be subject to passport denial because total arrears subject to offset did not exceed $5,000 at any time since January 1, 1998 (the date OCSE implemented the passport denial remedy), or exceeded $5,000 but were later paid in full for purposes of federal offset, checks SEARCHS for account information.

      i. **Arrears never exceeded $5,000--relief available.** If SEARCHS shows the obligor is correct (arrears never exceeded $5,000, or exceeded $5,000 but were later paid in full for purposes of federal offset), requests the necessary adjustments to SEARCHS accounts. If an emergency situation exists (the obligor must obtain a passport immediately or suffer harsh consequences), proceeds to step 8 to initiate an emergency withdrawal of passport denial. Otherwise, proceeds to step 7 for an exclusion.

ii. **Arrears exceeded $5,000--no relief available.** If SEARCHS shows arrears exceeded $5,000 and were correctly submitted at any time since January 1, 1998, and those arrears were not later paid in full for purposes of federal offset, follows the procedures in section CS 508.5, Federal Offset Administrative Review, to resolve the complaint. Returns to this section only if the review process results in a change in SEARCHS amounts to the extent that relief is now available.

c. **Life or death situation.** If the obligor agrees he or she is subject to passport denial based on arrears, but requests relief from the passport remedy based on a life-or-death situation, evaluates the claim according to the criteria listed in Chart 5-1 at the end of this section. If emergency relief would be appropriate, identifies and arranges for the obligor to provide the necessary documentation, and proceeds to step 8.

d. **Normal processing.** If the obligor agrees he or she is subject to passport denial based on arrears, and a life-or death situation does not apply, explains the obligor's opportunity for relief as follows: If the obligor reduces TANF and non-TANF arrears to amounts below the respective thresholds for federal offset, the obligor's case(s) will be deleted from the offset file in the CSED's next monthly submission. Eligibility will be returned when OCSE processes the submission and decertifies the obligor to DoS; the obligor may then reapply for the passport.

Enters a SEARCHS case note for the contact and takes no further action in this section.

7. **Processing an exclusion.** Upon determining in step 6 that exclusion applies, requests supervisor approval for the exclusion and enters a SEARCHS case note documenting the request. The case note must contain adequate supporting facts for the supervisor's review.

CAUTION: Because the passport will be valid for 10 years, with little or no opportunity for revocation during that time (see step 5), it is essential that the caseworker carefully review the enforcement prospects in the case before initiating relief in this step.

Monitors for a response from the supervisor within the same day, or within two working days if necessary. Upon receiving approval in step 9, contacts the CSED Federal Offset Specialist to initiate the exclusion.

When the exclusion transaction is complete, provides to the obligor upon request any available information for reclaiming eligibility and obtaining the passport. See OCSE User Guide section 5-6, "Guidelines for Obtaining a Passport After Clearance of OCSE Denial," copied at the end of this section.

8. **Executing the Emergency Notice of Withdrawal of Passport Denial.** Immediately upon determining in step 6 that emergency relief applies and that the necessary documentation has been provided by the obligor, requests supervisor approval for the emergency withdrawal and enters a SEARCHS case note documenting the request. The case note must contain adequate supporting facts for the supervisor's review.

   CAUTION: Because the passport will be valid for 10 years, with little or no opportunity for revocation during that time (see step 5), it is essential that the caseworker carefully review the enforcement prospects in the case before initiating relief in this step.

   Monitors for a response from the supervisor within the same day. Upon receiving approval in step 9, immediately proceeds in steps 8a through 8c below.

   a. **Emergency documentation package.** Prepares a documentation package containing a description of any time requirements specific to the case, plus the specific documentation required in (1) or (2) below.

      (1) **For a life-or-death situation**--documentation verifying the death or medical emergency of an immediate family member. (See OCSE "Chart 5-1" at the end of this section for criteria and official documents; a written explanation of the situation is also required.)

      (2) **For an erroneous submission**--documentation verifying the erroneous submission of the individual for passport denial, along with a copy of the Passport Application Denial Letter the obligor received from DoS. A sample denial letter is included at the end of this section. (Specific documentation needed to verify erroneous submission will depend on the type of error. See the criteria for erroneous submission given in POLICY, Releasing an obligor--Emergency Request.)

   b. **Requesting Emergency Notice.** Contacts the CSED Federal Offset Specialist to request submission of the Emergency Notice of Withdrawal of Passport Denial. Delivers to the Federal Offset Specialist (by fax or other expedited method) the documentation package prepared in step 8a.

      Upon receiving a copy of the Emergency Notice submitted by the Federal Offset Specialist in step 11, sends a copy of the form to the obligor; attaches a warning that the copy is provided for reference only--the notice itself does not restore eligibility. Monitors for the outcome of the transaction.

c. **Results of emergency notice.** If the request is denied, returns to step 7 to process the request as an exclusion. If the request is granted, informs the obligor; provides to the obligor upon request any available information for reclaiming eligibility and obtaining the passport. See OCSE User Guide section 5-6, "Guidelines for Obtaining a Passport After Clearance of OCSE Denial," copied at the end of this section.

Supervisor

9. **Approving passport relief.** Upon receiving a request from the caseworker concerning an exclusion or emergency relief, takes action according to the following time frames:

FOR AN EXCLUSION--Within the same day if possible, but in any case within two working days.
FOR AN EMERGENCY WITHDRAWAL--Within the same day.

Determines the request based on the case facts and CSED criteria listed in POLICY, this section. Enters a SEARCHS case note approving or denying the relief and giving the basis for the decision, and notifies the caseworker.

CAUTION: Because the passport will be valid for 10 years, with little or no opportunity for revocation during that time (see step 5), it is essential that the CSED carefully review the enforcement prospects in the case before granting relief in this step.

Federal Offset Specialist

10. **On-line exclusion.** Upon being contacted by the caseworker for an exclusion of the passport denial remedy, verifies that all of the obligor's CSED cases have been included in the determination, and that supervisor approval has been obtained.

Submits the exclusion electronically for the obligor's TANF and non-TANF arrears, and enters a SEARCHS case note for the exclusion sent. Monitors for acceptance of the transaction and notifies the caseworker. If necessary, maintains the exclusion with OCSE by resubmitting the exclusion whenever the CSED's Case Submission and Update File contains a tax offset exclusion for the obligor (the tax offset exclusion is entered by batch process, and overlays the passport exclusion–see section CS 508.3).

NOTE 1: Other States Denying Passport. In submitting the exclusion via electronic process, the Federal Offset Specialist may learn of other states that have certified the obligor for passport denial. This information may be useful to the caseworker--OCSE will not decertify the obligor to DoS as long as any state maintains the certification for passport denial.

NOTE 2: On-Line process for Removing Exclusion. If at any time after the exclusion is set it becomes necessary for the CSED to remove the exclusion, the Federal Offset Specialist can do so via on-line submission using the same software. See POLICY, Removing an Exclusion.

11. **Emergency withdrawal.** Upon being contacted by the caseworker for an emergency withdrawal from the passport denial remedy, verifies that all of the obligor's CSED cases have been included in the determination, and that supervisor approval has been obtained.

    Upon receipt of the documentation package prepared in step 8a, generates form CS-508.7A, Emergency Notice of Withdrawal of Passport Denial. Where necessary obtains any additional information from the caseworker. For purposes of the signature on the emergency notice, the "director or designee" must be one of the CSED's authorized representatives--either the Federal Offset Specialist or the Program and Training Bureau Chief.

    Faxes the form and accompanying documentation to the OCSE Special Collections Unit at the number given on the form. Retains the original of the form for the federal offset file, sends a copy to the caseworker (by fax if necessary), and enters a SEARCHS case note for the emergency withdrawal submitted.

    Monitors for disposition of the request and informs the caseworker. DoS makes the final determination on a life-or-death request; OCSE determines whether correction of an erroneous submission warrants emergency handling. If the request is denied, arranges with the caseworker to submit the request as an exclusion beginning in step 7.

OCSE

12. **Receipt of release from submitting state.** Upon receipt of a release from the passport denial remedy by a submitting state, proceeds in step 12a or 12b as applicable.

    a. For an exclusion submitted in step 10, processes the exclusion and transmits the decertification to DoS via the regular file (step 2).

    b. For an emergency request submitted in step 11, determines whether the request could have been submitted as a non-emergency exclusion. If so, informs the submitting state and takes no further action on the request.

       If the request is approved for emergency processing, enters an exclusion on the Case Master file for Montana, and sends the decertification to DoS using expedited procedures. DoS will release the hold on the passport within 24 hours if the obligor is otherwise qualified. (In the case of life-or-death situations DoS will make the final determination whether the decertification requires emergency release.)

NOTE: Coordination with Other Submitting States. OCSE will not decertify an obligor with DoS if the obligor is certified for passport denial by another submitting state and the state has not requested release. However, OCSE will process and retain the exclusion or emergency withdrawal in the OCSE master file, and will decertify the obligor if at any time in the future he or she is released by all other submitting states.

CHART 5-1: CRITERIA FOR VERIFYING LIFE-OR-DEATH SITUATIONS

Reasons for Traveling - the following apply to immediate family members only: • Imminent death or funeral • Serious illness • Dangerous operation	**Immediate Family:** • Parent or guardian of obligor • Child (natural or adopted) • Grandparent • Sibling • Aunt • Uncle • Step-child • Step-parent • Step-sibling • Spouse; sometimes the spouse may need to travel if they are supporting the obligor
Examples of Verification Required: • Death certificate • Letter from the doctor • Red Cross verification	

5.6 Guidelines for Obtaining a Passport After Clearance of OCSE Denial

The Passport Agency will hold the denied application for 90 days. At the end of the 90-day hold period, if OCSE has cleared the obligor, the Passport Agency will mail the passport to the obligor within two to five working days. If the clearing process exceeds 90 days, a new passport application must be submitted.

If OCSE has cleared an obligor and the obligor needs the passport before the end of the 90-day hold period, the following options are available:

- An obligor or a representative of a courier agency can go in person to the passport agency listed in the upper right hand corner of the DoS Passport Application Denial Letter. All passport agencies require an appointment be made in advance. Refer to Appendix D, “Technical and Program Assistance”, for the Web site listing major passport agencies, including addresses, office hours, and telephone numbers for appointment scheduling.
- An obligor can contact the National Passport Information Center (NPIC). Refer to Appendix D, “Technical and Program Assistance”, for information regarding how to contact NPIC. The NPIC representative will not know the status of the case, only that the application is on hold. The obligor must request that NPIC notify the passport agency listed in the upper right hand corner of the DoS Passport Application Denial Letter, relay that he/she has been cleared with OCSE, and provide the OCSE clearance date. If the passport is cleared, the passport agency will mail the passport to the obligor within two to five workdays. If the passport is being denied for reasons other than child support, DoS will contact the obligor.

CHART D-3: USEFUL WEB SITES

Resource	How to Contact Resource
Federal Law and Code	http://uscode.house.gov/usc.htm
Federal Information Processing Standard (FIPS) Codes	http://www.itl.nist.gov
Child Support Enforcement Home Page	http://www.acf.hhs.gov/programs/cse
General Passport Information	http://www.travel.state.gov/passport_services.html
Major Passport Agencies	http://www.travel.state.gov/agencies_list.html
Passports and Child Support	http://www.travel.state.gov/child_support.html
Injured Spouse Claim and Allocation Form information (Form 8379)	http://www.irs.ustreas.gov/prod/forms_pubs/formpub.html
Social Security Administration current SSN High Digit	http://www.ssa.gov/foia/highgroup.htm
Worldwide Geographic Location Codes	http://www.gsa.gov, select the "Public Information' link, under "Pages" select the "Geographic Locator Codes" link
National Passport Information Center	http://www.travel.state.gov/npicinfo.html 1-900-225-5674 • 1-900: Automated information is 55 cents per minute. • 1-900: Operator assisted calls are $1.50 per minute. (Operators are available 8:30 a.m. to 5:30 p.m., Eastern Time, Monday - Friday, except Federal holidays; you must speak with an operator to check the status of a pending passport application. Also, please note that the 1-900-225-5674 phone number will not work with certain cell phones.) 1-888-362-8668 (credit card users with Visa, MasterCard, Amex) • 1-888: flat rate is $5.50/per call TDD - 1-900-225-7778 (for the hearing impaired) TDD - 1-888-498-3648 (for the hearing impaired)
Two Parent Consent Law	http://www.travel.state.gov/two-parent.html
Children's Passport Issuance Alert Program (CPIAP)	http://www.travel.state.gov/pia_program.html
Office of Children's Issues	http://www.travel.state.gov/children's_issues.html Department of State Office of Children's Issues (CA/OCS/CI) 2201 C Street, N.W. SA-22, Room 2100 Washington, D.C. 20520-4818 Phone: (202) 736-7000 Fax: (202) 312-9743
FMS Program Information	http://www.fms.treas.gov
IRS	http://www.irs.gov

K.1 Passport Denial Letter

United States Department of State
Portsmouth Consular Center

National Passport Center
31 Rochester Avenue
Portsmouth, New Hampshire 03801-2900
1-900-225-5674

August 29, 2000

Name

Address

Dear Mr. *Name,*

This is in reference to the passport application you mailed on August 4, 2000. The Department of State has determined that you are ineligible to receive a passport. This determination is based on Section 51.70(a)(8) of Title 22 of the Code of Federal Regulations and the certification of the Secretary of Health and Human Services that you are in arrears of child support in excess of $5,000.00.

51.70 - Denial of Passports

(a) A passport, except for direct return to the United States, shall not be issued in any case in which:
(8) The applicant has been certified by the Secretary of Health and Human Services as transmitted from a state agency to be in arrears of child support in an amount exceeding $5,000.00.

Neither this passport agency nor the Department of State has information concerning your child support obligation. A list of state child support enforcement agencies and their phone numbers is attached to this letter for your use.

This decision is not appealable with the Department of State. You may receive a passport once the Secretary of Health and Human Services has certified to the Secretary of State that you have satisfied the child support arrearage.

This application is denied unless you adequately address the requirements stated above for issuance of a passport. If we do not receive a response within ninety (90) days, your application will be filed without further action.

PLEASE RETURN THIS LETTER WITH YOUR REPLY. THANK YOU.

Attachment:
List of State Child Support Enforcement Agency Telephone Numbers.

To Customer: If you have any questions regarding this letter or your passport application, contact the National Passport Information Center at 900-225-5674 (TDD 900-225-7778), or 888-362-8668 (TDD 888-498-3648) with a major credit card Customer Service Representatives are available Monday – Friday, 8:30 a.m. to 5:30 p.m., ET, excluding Federal holidays. Also, for a wealth of passport and travel information, including where to apply, visit us at http://travel.state.gov

REFERENCE

45 CFR 303.104; MCA § 40-4-209

GENERAL RULE

When an individual becomes six months delinquent in child support payments the department may, if the circumstances warrant, petition the district court to order the obligor to post bond, give a mortgage, or provide other security in a value equal to the amount of support to be paid over a two year period, as long as the arrearage exists. If the obligor should still fail to make support payments the person or public agency entitled to receive the payment may recover on the bond or other security. The amount recovered will first be applied toward arrearages, then toward current and future support. The department must have guidelines to be utilized in determining if the process carries out the purpose of enforcing child support or if the circumstances are appropriate to each case. Minimum circumstances to be considered are the payment record of the person and availability of other remedies. If the department determines that this procedure is not appropriate, it may not request an order.

PROCEDURE

1. Investigator will review case and assess the obligor's prior payment history and insure that the arrearage amount is greater than six months support obligation pursuant to court or administrative order. A decision will be made to determine if the arrearage has accrued in spite of the obligor's good faith attempt to keep current, or as a result of his/her willful lack of compliance with an existing order. If, and only if, the arrearage is determined to be due to willful noncompliance then:

2. A financial assessment will be made of the obligor's personal assets with the primary consideration being his/her ability to post bond or other security in an amount equal to two years support obligation. If the obligor has assets or the financial ability to post bond or security equal to the two years support amount then:

3. Review file to insure all other collection remedies have been evaluated and/or attempted in the case. If all other remedies have been exhausted and all other requirements met, the case is presented to the regional supervisor with written justification and request that legal action be taken to establish the bond or other security.

Supervisor

Review the case file and justification to insure:

1. That a six month arrearage exists;

2. That current circumstances and historical payment practices warrant obtaining a bond;

3. That the obligor has the financial means to obtain a bond or has assets that could be used as security equal to two years support; and

4. That all other methods to collect ongoing support have been exhausted.

If all conditions have been met, refer case to the legal unit for court action.

Legal Unit

Review file and justification to insure that the case meets the previously stated requirements.

If the circumstances are such that further legal action is appropriate, the legal unit will petition the district court for an order requiring the obligor to post bond.

Investigator

Once the case is returned from the legal unit with the court ordered bond or security, it must be monitored to insure that payments are kept current. If obligor falls into arrears the case will be returned to the legal unit for execution on the bond.

SUPERSEDES

CS 508.14, "Credit Bureau Reporting," August 1, 1995.

REFERENCE

MCA sections 40-5-261, 31-3-102, and 31-3-124.

POLICY

Applicability. This section contains procedures for enforcing child support debts by reporting the amounts to consumer reporting agencies. Procedures for obtaining information from these agencies concerning an obligor, or an obligor's assets, are given separately in the CSED Locate Manual.

Contract Basis for Credit Bureau Reporting. The CSED will make support debt information available to consumer reporting agencies that have signed contracts with the CSED. Contract discussions may be initiated at the request of the agency or by the CSED.

The CSED will pursue and execute contracts with only those consumer reporting agencies that it determines

- have sufficient capability to systematically and timely make accurate use of support debt information, **and**
- have furnished satisfactory evidence of meeting the definition of "consumer reporting agency" given in section 31-3-102(4), MCA.

The term "credit bureau" is used in the remainder of this section to refer to a CSED-contracted consumer reporting agency.

Disclosure of support debt information to credit bureaus will be periodic and automatic; the CSED will not charge a fee to recover the cost of providing the support debt information.

Qualified Cases. A CSED case qualifies for automatic credit bureau reporting whenever (1) the obligor owes a support debt equal to or greater than two months' support obligation, or the case is an arrears-only case, **and** (2) the case is not an incoming interstate case. (If the obligor in an incoming interstate case also owes a debt in an open Montana case (for the same or a different family), the Montana debt is subject to CSED credit bureau reporting by the Interstate Region.)

Notice of Proposed Release of Information. The CSED must provide advance notice to the obligor of its intent to release information to the credit bureau. The notice must contain the support debt dollar amount, and must inform the obligor of the methods available for contesting the accuracy of the information. The primary vehicle for this notice is the CSED's Child Support Statement (the obligor bill), issued monthly in enforcement cases where support is not being collected by income withholding.

The CSED may also include notice of credit bureau reporting in any of its regular enforcement notices, including those issued in connection with the following processes: support order registration for enforcement; administrative income withholding; license suspension; notice of support debt (based on support order); federal tax offset; state bad debt offset; and perfection of support lien. This "piggyback" form of notice requires that the underlying enforcement notice contain a support debt dollar amount.

In other CSED notices not concerned with support debt--for example, in notices about support order establishment, registration, or modification; paternity establishment; or medical support enforcement--the CSED may warn obligors that if a debt is incurred it may be reported to the credit bureau. This is a courtesy warning only; it does not qualify as official "advance notice" for purposes of credit bureau reporting, and need not give methods for contesting the accuracy of reported information.

Although the CSED is required to give notice to the obligor before releasing support debt information, **the notice need not be "actual notice."** The CSED need not positively prove it has given the obligor the information directly and personally, as long as it takes reasonable steps to inform the obligor of its intent--whether or not the obligor actually comes to know of it. In general, the CSED presumes proper receipt of credit reporting notice based on either the monthly Statement or one of the regular enforcement notices.

If, after the debt is reported, the obligor objects to the action on the basis of lack of notice, the caseworker checks the case file for documentation of proper service of notice. In unusual situations the caseworker may discover that (1) the Child Support Statement was not sent or was not delivered **and** (2) no enforcement notice was served in connection with the reported debt amount (for example, the reported debt includes arrearages accrued since the last withholding notice or contained in a separate judgment). In these situations the CSED simply informs the obligor of the methods for contesting the accuracy of the reported debt (see below), and acts upon any request received according to standard procedures.

Contesting Accuracy of Reported Amounts. The obligor may contest the accuracy of the support debt amount released or proposed for release to credit bureaus by requesting one or all of the following remedies:

(1) Informal administrative review by the CSED regional office--may be requested at any time after the CSED specifies the amount of the support debt that may be reported to the credit bureau.

NOTE: Timing of Review. The informal review may be conducted at any time, separately or in conjunction with any CSED hearing in the case. In cases where the CSED has not yet reported the debt, the caseworker should make every effort to conduct the review **before** the amount is reported to the credit bureau.

(2) Reinvestigation by the credit bureau--may be requested at any time after the CSED reports the support debt and the information appears in the credit bureau record (see procedures at section 31-3-124, MCA).

(3) Administrative hearing by the CSED Office of the Administrative Law Judge (OALJ)--may be requested at any time **after** (a) the CSED has reported the debt, **and** (b) the

obligor has requested and obtained a reinvestigation by the credit bureau. (Informal review is not required.) The OALJ will determine whether these requirements are satisfied, and will grant or deny the request accordingly. Findings of the hearing officer are subject to judicial review.

NOTE: Res Judicata. At the hearing the obligor may not raise defenses concerning the accuracy of the debt amount reported to the credit bureau if the defenses

- were previously ruled on by a court or administrative final decision and order, OR
- were put at issue by a CSED notice served on the obligor in connection with a regular enforcement process (see "Notice," earlier in this POLICY), and the obligor failed to timely request a hearing.

NOTE: Payments Made After Order or Notice. Where either of the conditions in the above NOTE applies, the obligor may still contest the accuracy of the debt if the obligor alleges there were payments on the debt after the period identified in the order or notice.

Reporting Mechanism. The CSED reports or "certifies" support debt information to credit bureaus electronically, by providing a computer tape in an agreed format. The tape is produced by SEARCHS batch process, and includes the obligor's name, social security number, address, certified support debt amount, and credit reporting code. (The code describes the degree of delinquency and the reportability of the debt. Generally, the CSED uses a code that reflects a 30-day delinquency and a sum-certain dollar amount. However, the credit bureau may choose to view the record as an unrated report.) The credit bureau enters the information in its record for the obligor.

The credit bureau record displays the unpaid balance and highest ever debt. The highest ever debt remains on credit bureau records for seven years. Data on the unpaid balance will remain on credit bureau records until the unpaid balance is paid in full, suppressed, or the CSED is no longer enforcing the case. The information reported to the credit bureau on each obligor is updated monthly, whether or not a change occurs.

Downward Corrections. When a downward correction has been or will be reported by tape match, the CSED must, **at the request of the obligor,** provide a copy of the corrected Debt Computation Worksheet for the obligor to place in his or her credit file. The Debt Comp must include all months affected by the correction, and will serve to document CSED corrections to debts previously reported to the credit bureau. (Generally the credit bureau will not allow the CSED to place written information in the file, but will allow the obligor to do so.)

Relationship of Child Support Statement and Credit Bureau Reporting. The monthly Child Support Statement specifies the debt amount that will be reported to the credit bureau. (This "reportable debt" is usually different from the total payable debt also listed on the statement.) Credit bureau reporting of the reportable debt occurs in the second month after the statement month. SEARCHS design calls for the Child Support Statement (dated the last day of the month) to be issued as soon as possible after month-end processing, and for the corresponding credit reporting tape to be run and mailed after month-end processing and billing for the **next** month. This allows time for the obligor to decrease the amount to be reported by paying some or all of the debt, or to contact the CSED to discuss or contest the accuracy of the amount to be reported.

EXAMPLE: An obligor with an arrears balance through October of $400 and a monthly obligation of $300 makes no payments in November. The statement of November 30 (issued after November month-end) lists a reportable debt of $700, and advises the obligor the amount will be reported to the credit bureau unless arrears are reduced before December 31. The credit reporting tape run in early December does not list the debt or the obligor at all. In December the obligor pays current support but makes no payments on the debt. The tape run in early January (after December month-end and the December 31 statement) reports the obligor with a debt of $700.

Payments on Reportable Debt. In creating the credit reporting tape SEARCHS uses the lesser of

- the reportable debt amount listed on the corresponding Child Support Statement, or
- the debt shown by the obligor's SEARCHS accounts on the date the tape batch is run.

Therefore, if an obligor makes payments on a reportable debt before the tape is created, the amount actually reported will be less than the reportable amount listed on the statement. (In the above EXAMPLE, if the obligor makes an additional payment of $100 in December, the January tape will list the debt at $600.) The support debt amount shown on the BIL screen is the amount projected (from the statement) for credit bureau reporting; the amount actually reported is shown on the CRD screen.

Payments in Full, Loss of Enforcement Authority. The CSED must notify the credit bureau within 30 days when

- an obligor pays a reported support debt in full, or
- the CSED is no longer enforcing a reported support debt.

Normally the SEARCHS automatic billing and credit reporting cycles will satisfy this requirement, using the latest account balances and case enforcing statuses (open/closed) to create update tapes at one-month intervals. Because these cycles depend on month-end timing, however, it is possible for the interval between two credit reporting tapes to be more than 30 days. If the payment in full (or loss of enforcement authority) occurs at the very beginning of that interval, there could be a technical compliance situation.

EXAMPLE: SEARCHS creates the monthly credit reporting tape on March 6 (after February month-end and billing). An obligor pays a support debt in full on March 7. The next credit reporting tape is run on April 8, 33 days after the last tape, and 32 days after the debt was paid in full.

When payment in full or loss of enforcement authority will not be reported within 30 days by SEARCHS tape match, the CSED must timely notify the credit bureau in writing, stating the debt has been paid in full, or the CSED is no longer enforcing the debt.

Also in regard to payment in full, an obligor may require proof of the payment to present to a lending institution, employer, or other person **before** the next tape match (even when the update will occur within 30 days). In this situation the CSED will, at the request of the obligor, prepare a hard-copy release stating the debt has been paid in full **and specifying the time period(s) covered by the release.** (The release should not imply the obligor is released from any current or future support obligation.) If an obligor owes a support debt in more than one case, a release is appropriate only when all of the debts are paid in full.

Suppression--Policy. Although SEARCHS is designed to allow suppression of credit bureau reporting in individual cases (via the CAS screen), **caseworkers may not suppress reporting except as described below.** In some cases suppression is required.

(1) **Alleged debt.** The debt includes months where the only information available is the obligee's allegation or affidavit of support, and the amounts are neither adjudicated nor supported by CSED payment records. SUPPRESSION REQUIRED.

If the obligor is in a locate status (and adjudication is therefore impossible), the suppression must be lifted after 60 days; otherwise, the suppression is lifted upon adjudication of the debt.

(2) **Other uncertain debt.** The debt amount is not reasonably certain, and reporting of the SEARCHS amount would likely result in downward correction of the amount in a later month. (For example, account adjustments are pending; or, there is reason to believe the obligor will produce evidence of additional payments.)

(3) **Debt caused by annualization.** The debt amount has reached the threshold for credit bureau reporting (two months' support obligation) only because arrears created by income withholding annualization are included in the amount. SUPPRESSION REQUIRED.

(4) **Bankruptcy.** A bankruptcy court or other tribunal of appropriate jurisdiction has imposed a stay on collection actions. SUPPRESSION REQUIRED.

(Note that when a stay of collection has been imposed, suppression of the monthly Child Support Statement is also required.)

(5) **Overall enforcement (unusual situations only).** Credit reporting would impair the CSED's overall ability to enforce the case. Suppressions based on an "overall enforcement" advantage should be entered only when supported by very strong case facts.

Suppression--Tape Information. When reporting is suppressed, the tape submitted to the credit bureau will contain no listing for the obligor, unless there is already a CSED-certified debt amount on file with the credit bureau for the obligor. If this is the case, the tape will list the obligor with the appropriate code indicating there is an adjustment pending and the CSED is not able to certify a specific dollar amount. If the obligor owes a support debt in more than one case, the "suppression" code will appear on the tape if reporting is suppressed in **any** of the obligor's cases.

Automatic Suppression. If a caseworker suppresses an obligor's Child Support Statement, **SEARCHS will automatically suppress credit bureau reporting** as well. Caseworkers should be aware of this consequence in considering whether to suppress a bill. In some cases the reason for suppressing the statement also satisfies the condition for suppressing or disqualifying a case from credit reporting (for example, the debt amount is not reasonably certain, or the accounts in the case are overpaid and no debt exists). In other cases the support debt is reportable, and suppression of the statement will take away an important enforcement option. The Regional Manager or supervisor must approve all Child Support Statement suppressions.

PROCEDURES

Central Office

Identifies consumer reporting agencies meeting the criteria listed earlier in this section (see "Contract Basis" under POLICY). Negotiates contract with individual consumer reporting agencies whereby the CSED provides debt information to the agency as described in this section. Contracted consumer reporting agencies are referred to as "credit bureaus."

Caseworker

1. Responds to telephone inquiries from obligors regarding credit bureau reporting processes, time frames, and amounts.

2. At any time upon identifying a case **qualified but not appropriate for credit bureau reporting** (see POLICY, "Suppression"), suppresses credit bureau reporting on CAS screen. Monitors case for resolution of suppression situation; restores automatic credit bureau reporting when appropriate. Resumes any procedures begun in step 4 or 7.

3. Upon contact by obligor wishing to contest accuracy of amount reported or to be reported, advises obligor of available methods and, if appropriate, proceeds to step 4 (informal review), step 7 (credit bureau reinvestigation), or step 8 (administrative hearing).

   NOTE: Lack-of-Notice Claims. This step also applies to contacts from obligors claiming lack of advance notice of credit reporting; available remedies still involve contesting the accuracy of the reported amount.

4. Upon request of obligor, conducts informal administrative review of support debt amount reported or to be reported to credit bureau. Works with obligor to identify and resolve discrepancies in monthly ordered amounts and payments, using current Debt Computation Worksheet and any information provided by obligor.

If debt has not yet been reported, attempts to resolve issue prior to next SEARCHS batch run that would report the noticed debt.

Where timing allows (following notice **or** actual reporting), uses opportunity of next available CSED hearing in the case to conduct review.

5. Before proceeding to step 6,

   - If review indicates debt amount is inaccurate, and correct amount can be determined, makes necessary adjustments to SEARCHS accounts.

   - If review indicates credit bureau reporting is not appropriate at this time, takes action to suppress as in step 2.

6. Informs obligor of results of review; takes action in step 12 (to supplement electronic reporting) if necessary. If obligor is dissatisfied with determination, explains opportunity for administrative hearing following credit bureau reinvestigation. If obligor is satisfied with review results, takes no further action.

7. Upon receipt of written request from credit bureau for verification of reported debt pursuant to a reinvestigation, reviews accuracy of debt amount using information from current Debt Computation Worksheet. Responds in writing using any forms and within any time limits required by credit bureau, confirming or revising debt amount in question; keeps copy for case file. (If no time limit specified by credit bureau, responds within one week after receipt of verification request.)

   IMPORTANT: Some credit bureaus will remove the debt from the record if the response is not received timely. The caseworker may wish to set a SEARCHS tickler to ensure CSED compliance with reinvestigation time frames.

   If debt amount is revised, adjusts SEARCHS accounts accordingly and takes action in step 12 (to supplement electronic reporting) as needed.

   If reinvestigation indicates credit bureau reporting is not appropriate at this time, takes action to suppress as in step 2.

8. Upon receiving request from obligor for administrative hearing on accuracy of debt noticed for credit bureau reporting, determines whether following conditions are met:
   - debt has been reported to credit bureau, **and**
   - obligor has obtained a reinvestigation by the credit bureau.

   If so, proceeds to step 9. If not, explains hearing is not available at this time; advises obligor of other remedies (informal review, credit bureau reinvestigation) and proceeds accordingly.

9. Completes and sends to obligor form CS-405.2, Request for Hearing, with instruction to attach proof of credit bureau reinvestigation before submitting to OALJ. Advises OALJ of any enforcement notices issued in the case and their resolution.

   NOTE: Proof of Reinvestigation. The credit bureau's official reinvestigation response letter to the obligor is proof the obligor has exhausted this remedy. If the obligor cannot produce the letter the caseworker should provide the OALJ with evidence of the reinvestigation from the case file, if available.

OALJ

10. Upon receipt of Request for Hearing on credit reporting issue, determines whether (1) CSED has reported debt in question **and** (2) obligor has obtained reinvestigation by credit bureau.
    - If not, informs obligor hearing is not available.
    - If so, schedules hearing, issues hearing notices, and conducts hearing in accordance with requirements of sections 40-5-226 and 40-5-253, MCA. Advises parties of results of hearing.

Caseworker

11. Adjusts SEARCHS accounts to reflect any support debt changes determined at hearing. If adjustments result in reduction of support debt, takes action in step 12 (to supplement electronic reporting) as needed.

12. At any time during credit reporting process takes actions in 12a through 12d as needed to supplement monthly electronic updating.

    a. If support debt paid in full **and** obligor requires proof before next SEARCHS tape match--Prepares and provides to obligor, with copy to case file, release stating debt has been paid in full and giving applicable dates.

    b. If support debt paid in full **and** payment will not be reported by SEARCHS tape match within 30 days--Writes and mails letter to credit bureau, within 30 days after payment, stating debt has been paid in full.

    c. If CSED loses authority to enforce support debt (case closed, for example) **and** change will not be reported by SEARCHS tape match within 30 days---Writes and mails letter to credit bureau, within 30 days after loss of authority, stating CSED no longer enforcing debt.

    d. If CSED determines reported debt amount is inaccurate (and correct amount can be determined) **and** obligor requests correction to historical information in credit file--Prepares and mails to obligor corrected Debt Computation Worksheet for all months affected by correction; retains copy for case file. (Obligor may use Debt Comp to "correct" history in his or her credit file.)

REFERENCE

45 CFR § 303.71

POLICY

Under certain circumstances, the Child Support Enforcement Bureau (CSEB) can ask the Internal Revenue Service (IRS) to use its full powers to collect a child support arrearage (45 CFR 303.71). The request must be certified by the federal Office of Child Support Enforcement (OCSE) Regional Representative in Denver, and the CSED is required to pay the collection costs incurred by the IRS.

Before Montana can submit a case to the IRS for full collection services, the Regional Representative, Region VIII, OCSE/FSA must certify the case, based on the CSEB Application. The application for certification must be made on the form prescribed and provided by the OCSE. If the application does not meet federal requirements, the Regional Representative will attempt to correct it in consultation with the CSEB. If the application cannot be corrected through consultation, it will be returned to the CSEB with an explanation of why the case was not certified to the IRS.

All "reasonable" enforcement efforts to collect the arrearage must have been attempted by the CSEB, the custodial parent, or the custodial parent's representative prior to application for IRS services.

A case certified for full IRS collection because of another state's failure to enforce may result in the imposition of penalties against that state. For this reason, the final decision of whether or not a case should be submitted for certification rests with the Bureau Chief.

NOTE: Full IRS collection may be useful when a resident obligor has non-exempt assets located outside the boundaries of Montana, or within an Indian reservation. For an explanation of non-exempt assets, see CS 504.3, "Implementing Liens."

CASES ELIGIBLE FOR CERTIFICATION

To be eligible for certification to the IRS, a case must meet the following criteria:

1. There must be a court or administrative support order;
2. Arrears under the support order must total at least $750.00;
3. At least six months must have passed since the last request for full IRS collection services was made;
4. All reasonable collection methods must have been attempted;
5. The CSEB must be providing services pursuant to Title IV -D of the Social Security Act.

CRITERIA FOR REQUEST

Once a case qualifies for certification, the following information must be collected in order to prepare the application:

1. The obligor's identity, including:
   - name
   - social security number
   - address
   - telephone number, if known
   - employer name, *address, and phone number, if known

   NOTE: Identification information -- address and employment -- must be verified during the three-month period immediately proceeding the application. The verification source, and the date verification was received must be provided. The IRS will reject applications without current address verifications.

2. Debt information, including:

   - amount of arrearage and period of calculation

   - name of agency or individual providing verification of the identity information, and the month and year verification was received by the CSEB;

3. A certified copy of the support order(s);

4. The amount owed under the support order(s), including a statement of whether the amount is in lieu of, or in addition to, any amounts previously referred to the IRS for full collection services, not including federal tax offset;

5. A statement summarizing the enforcement efforts taken, the results, and the reasons why further state action would be unproductive;

   NOTE: If the case has been referred for interstate enforcement, that fact must be noted, and the results detailed. If a responding state has failed or refused to initiate an enforcement action against the obligor residing there, the CSEB must notify that state that the case is being referred for IRS collection. The CSEB must note the failure of the responding state to initiate an enforcement action in the request for IRS services.

6. The dates of any previous referrals of the case to IRS;

7. A statement that the CSEB agrees to reimburse the IRS for the costs of collection;

8. A statement that the CSEB believes that the obligor has assets which the IRS can levy upon to collect the arrearage, and a list of those assets, their location and value.

PROCEDURE

Caseworker/Typist

1. Reviews case file and "Enforcement Checklist," CS 500.2, to determine that necessary application information has been collected and verified. If so, refers to Regional Supervisor for review.

Regional Supervisor

2. Determines whether case is eligible for certification:
    a. If case is not eligible for certification returns to caseworker/typist for further investigation, as necessary.
    b. If case is eligible for certification and meets information requirements, approves for application preparation and returns to caseworker/typist.

Caseworker/Typist

3. Prepares and retains one copy of form OCSE-20 (available from the Administrative Support Unit in Helena). Prepares five (5) copies of supporting documentation, retaining one copy of each document for the case file.
4. Forwards original form OCSE-20 and four copies of supporting documents to Bureau Chief.

Bureau Chief (or designee)

5. Reviews form OCSE-20 and supporting documentation.
    a. If application is disapproved, returns it and supporting documentation to the originating CSE Regional Office.
    b. If application is approved, signs and forwards it to the Administrative Assistant for further processing and mailing.

Administrative Assistant

6. Upon receipt of an approved and signed application, makes 4 copies, returns one copy to caseworker/typist, and mails original form OCSE-20 and 3 copies, along with the four copies of the supporting documentation to the OCSE Regional Representative.

Caseworker/Typist

7. Substitutes form OCSE-20 for retained copy in file.

a. If disapproved, notes in case record and forwards the case to the Regional Supervisor for review and possible closure.

b. If approved and signed, notes in case record and monitors for collection action.

SUPERSEDES

CS 510.1, Withholding Action--With Notice, May 19, 2003.

REFERENCES

42 USC § 666(b); 45 CFR 308.2; MCA Title 40, Chapter 5, Part 4.

DEFINITIONS

ALTERNATIVE ARRANGEMENT--An agreement between the parties for payment of support that (1) provides sufficient security to ensure compliance with the arrangement and (2) has been approved by the entity issuing the support order as a basis for exempting the obligor from immediate income withholding.

DELINQUENCY--Any amount of unpaid support owed by the obligor on the 8th working day after the last day of the month in which payment was due.

WITHHOLDING JUDGMENT--A judgment for past-due support or support-related amounts that specifically authorizes collection by income withholding.

WITHHOLDING NOTICE--A Notice and Order for Withholding; or, if issued prior to May 19, 2003, a Notice of Intent to Withhold Income, or a Supplemental Notice of Intent to Withhold. When referring to a previous notice, a withholding notice may also include a voluntary withholding authorization entered in section CS 510.3.

WITHHOLDING ORDER--An Order to Withhold Income for Child Support; or, an Order to Withhold Income or Order to Modify/Terminate Withholding issued prior to October 1998.

POLICY

Applicability. The procedures in this section apply when the CSED takes a withholding action that requires notice and opportunity for hearing (see Conditions for Issuing a NOW below). In cases where notice is not required, procedures in section CS 510.3, Withholding Action--Without Notice, apply.

Withholding Action. The CSED takes income withholding action in this section by issuing a Notice of Withholding (NOW) and, if an employer or other payor of income is known, simultaneously issuing an Order to Withhold Income for Child Support (OWI). The CSED uses the NOW to determine the support debt for all enforcement purposes, either by default of the obligor, or by final agency decision and order following a hearing on the notice.

Authority over Employer/Payor, Payee Designation. To issue an OWI the CSED must have authority over the employer/payor and authority to direct payment of withheld income to the CSED. (For details, see POLICY, section CS 510.3, Withholding Action–Without Notice.) For purposes of this authority, personal jurisdiction over the obligor is not required; however, requirements for service of the NOW listed in POLICY, this section (510.1), still apply.

Amounts in the NOW and OWI. The CSED includes in the NOW and the OWI the amounts to be withheld each month for current support and support debt, as well as the amount of the total unpaid support debt. Support debt includes arrears and any support-related judgments for fees, fines, interest, or medical costs. The monthly withholding for support debt is 1/24th of the total unpaid amount, or 25% of the obligor's net income, whichever is more.

In an action to add new arrears to the support debt listed in an existing withholding order, the monthly withholding for support debt must be recalculated at 1/24th of the new total support debt alleged in the NOW. However, if there are no new arrears and only the amount of current support is being changed, the existing withholding for support debt is not recalculated.

Types of Withholding. The first withholding action for a given support order is characterized as "immediate withholding," "delinquency withholding," or "voluntary withholding," depending on the facts of the support case (see "Basis" paragraphs below, or section CS 510.3 for voluntary withholding).

Regardless of the type of initial withholding, the CSED can take subsequent withholding action in a case whenever current support or support debt changes, as long as the applicable support order is in effect.

Basis for Immediate Income Withholding. Under Montana law immediate withholding applies when

- the child support order was issued or modified in Montana after January 1, 1990,

  -OR-

  a child support order issued in Montana or another state specifically requires income withholding for current support; and
- the support order does not exempt the obligor from immediate withholding; a support order may specify an exemption on the basis of (1) good cause or (2) an alternative arrangement (see DEFINITIONS).

NOTE: Alternate Basis for Immediate Withholding. For a support order that does not specifically require income withholding for current support, the CSED may apply immediate withholding in the case if it is able to timely determine that laws requiring immediate withholding were in effect in the issuing state at the time of the order. In questionable cases the caseworker should consult the regional legal staff.

Basis for Delinquency Income Withholding. Under Montana law delinquency withholding applies when

- the support order is not subject to immediate withholding based on its date or terms; or, an exemption from immediate withholding applies (see above), and
- a delinquency occurs that is not paid in full following a Letter of Delinquency (see below), or for which a Letter of Delinquency is not required,

  -OR-the obligor has not complied with an alternative arrangement and (in a non-public assistance case) the obligee requests that withholding begin.

SPECIAL REQUIREMENT: In a case where delinquency withholding applies based on the obligor's failure to comply with an alternative arrangement, **and there is no delinquency with respect to the amount due under the support order,** the CSED must serve and resolve the NOW before proceeding with the OWI.

Conditions for Issuing a Letter of Delinquency. In a case where immediate withholding and voluntary withholding **do not** apply, the CSED issues a Letter of Delinquency when **both of** the following conditions are met:

(1) A delinquency has occurred (see DEFINITIONS).

(2) The CSED has not previously issued a Letter of Delinquency in the case; or, for any previous Letter of Delinquency the delinquency was proved not to exist.

If the obligor does not "cure" the delinquency (pay the amount in full) within 8 working days, the CSED initiates a delinquency withholding action.

Conditions for Issuing a NOW. The CSED issues a NOW for an initial or subsequent withholding action in this section when **any** of the following conditions applies (all previous withholding notices that are not NOWs are assumed to be resolved):

(1) **Additional arrears.** Immediate withholding applies or a previous withholding notice or withholding judgment has been issued, and arrears have accrued that are not included in a withholding notice or withholding judgment, and **either**
  - the new arrears are the only unpaid arrears in the case (the arrears balance was $0 before the new arrears accrued),

    or
  - the new arrears are not the only unpaid arrears in the case (other unpaid arrears are included in a previous withholding notice or judgment), and the amount of the additional arrears, or other case facts, justify the cost of taking a withholding action.

  (Note that a support judgment that does not qualify as a withholding judgment (see DEFINITIONS) requires a NOW for collection by income withholding; the purpose of the NOW in this situation is not to resolve the amount, but to resolve the use of income withholding as an enforcement remedy.)

(2) **Delinquency withholding.** The obligor has become subject to income withholding based on a delinquency or for failure to comply with an alternative arrangement (see Basis for Delinquency Withholding above).

(3) **Change in current support.** Immediate withholding applies or a previous withholding notice or withholding judgment has been issued, and

- the CSED has determined that the amount of current support has changed based on a specific provision of the support order, and
- the provision relies on external information to determine the time, amount, or applicability of the change.

(4) **Authority to collect current support.** (DELINQUENCY WITHHOLDING CASES ONLY) A previous withholding notice has been issued for support debt only, or a withholding judgment has been entered, and the CSED has now gained or regained the authority to collect current support in the case.

Automated Income Withholding and the NOW. The NOW will be generated automatically by the SEARCHS automated income withholding (AIW) function when **all** of the following conditions apply:

OBLIGOR CONDITIONS

(1) **Obligor match.** A match occurs between an AIW locate source and a SEARCHS obligor. AIW locate sources are the State Directory of New Hires, the National Directory of New Hires, and Unemployment Insurance.

(2) **New employer.** There is no existing OWI to the employer/payor identified by the locate source.

(3) **Simple structure for fees.** If there is more than one open case or subcase for the obligor, there is no fee account balance greater than $0 for any of them.

(4) **Non-multiple regions.** If there is more than one open case for the obligor, all of the open cases are in the same region.

CASE CONDITIONS

(5) **Not suppressed.** The AIW function is not suppressed on the CAS screen.

(6) **Case characteristics.** The case qualifies for AIW by its characteristics; that is,
- the case is open;
- the case is not assigned to region 90, 95, or 99;
- the case type on the IST screen is not interstate initiating (account types do not matter); and
- the case has an open ADMN or CORT order on the SOD screen.

MASTER CONDITIONS

(7) **No master.** There is no AIW master withholding order for the obligor; or, there is a master order but the account types in the master do not match the open account types on SEARCHS (see section CS 510.3).

SUBCASE CONDITIONS FOR NOW

(8) **No in-process NOW.** There is at least one subcase where there is no "in process" NOW on SEARCHS. An in-process NOW is one for which there is a served date but no resolved date on the NOI screen.

(9) **New arrears.** For at least one subcase that meets condition (8) above, both of the following conditions apply:

  (a) There is an arrears balance due for the subcase account.

  (b) There is no existing income withholding declining balance (DBD) for arrears for the subcase,
  - OR -
  There is an existing income withholding DBD for arrears for the subcase, and the DBD amount is $0,
  - OR -
  There is an existing income withholding DBD for arrears for the subcase, and the arrears balance for the subcase is greater than the original noticed amount of the DBD.

When all of the above conditions apply, the AIW function will generate a NOW for each subcase that meets the specific "subcase conditions" (new arrears, no in-process NOW). AIW will also

- **generate an OWI** to the employer/payor identified by the locate source (see section CS 510.3 for OWI amounts);
- **build the NOI and OWI** records on SEARCHS needed to generate the NOW and OWI documents;
- **generate a Debt Computation Worksheet** for each subcase where a NOW is created,
- **create/update the DBD** for income withholding arrears (from the new NOI record) in each subcase where a NOW is created, and
- **save the previous amount** and account details for any DBD that is replaced in this process, and enter a SEARCHS event containing the information.

When any of the AIW conditions in (1) through (8) above does not apply, but a NOW is required by CSED policy, the caseworker must generate all three documents--the NOW, the OWI, and the Debt Computation Worksheet--using regular SEARCHS document generation processing. (In some cases AIW will generate only an OWI, with no NOW, based on the existence of a qualifying master order. If there are new arrears in the case the OWI amounts will not reflect them, as amounts taken from a master include only previously noticed arrears.)

Suppressing AIW. SEARCHS automatically suppresses the AIW function on the CAS screen whenever the case status code is changed to, or entered as, a Native American Jurisdiction (NAJ) code. Certain other one-time suppressions were also set by SEARCHS during the September 2003 AIW case conversion process. The caseworker may remove an auto-suppression at any time, if case facts indicate that AIW-generated documents would be appropriate.

The caseworker can also manually suppress the AIW function at any time. However, manual suppression is limited by policy to situations where

- the support order contains an exemption from income withholding; or
- a stay of enforcement issued by an appropriate tribunal is in effect; or
- a Letter of Delinquency (8-day letter) applies and the delinquency is not yet subject to withholding (see Basis for Delinquency Income Withholding); or
- the CSED has not yet obtained authority to redirect payment of withheld income in the case (see Authority over Employer/Payor, Payee Designation); or
- the reason for lifting a previous auto-suppression no longer applies; or
- there is reason to believe an AIW action would be inappropriate (for example, the debt is uncertain in one or more of the obligor's cases or subcases; or, complex accounting facts are likely to cause inaccuracies in AIW documents), **and** the supervisor approves the suppression.

Service of the NOW. Montana law requires service of the NOW on the obligor by personal service (sheriff's service, private process service, or acknowledgment) or certified mail; in the case of certified mail CSED policy requires restricted delivery. However, when the CSED has previously served a withholding notice on the obligor by one of these methods (or has entered a voluntary withholding authorization in section CS 510.3), service of the NOW may be by regular mail. The notice is considered served by regular mail so long as it is not returned undelivered.

In cases where personal service or certified mail is required (a withholding notice or voluntary withholding authorization has not been previously served in the case), the CSED may deem service of the NOW if all of the following requirements are met:

(1) The obligor cannot be located for service despite diligent efforts by the CSED; diligent efforts must include an attempt to serve the notice by sheriff's service or private process server.

(2) The existing support or paternity order carries the "deemed service of process" warning required by MCA sections 40-5-226(12) and others.

(3) The CSED sends the NOW by regular mail to the obligor's last known personal or employment address.

(4) The NOW is **not** returned to the CSED undelivered.

Unserved NOWs. When a NOW is created the notice status on the SEARCHS NOI screen is listed as "unserved." The unserved status remains in place until the caseworker enters a served date or manually changes the notice status. (For example, the caseworker may change the status to show that a hearing was requested or the notice was dismissed.)

Periodically the CSED issues a report listing unserved NOWs based on the NOI status. The caseworker is responsible for checking the report and continuing to make reasonable attempts to serve the NOW.

Basis for Contesting Withholding. The obligor may contest the withholding or amount of support debt stated in the NOW by requesting a hearing based on a mistake of fact. Montana law limits a mistake of fact to a mistake

- concerning the obligor's identity,
- concerning the existence of the support obligation,
- concerning the amount of current support to be paid,
- in the determination that the obligor is delinquent in the payment of support (DELINQUENCY WITHHOLDING ACTIONS ONLY),
- in the computation of the support debt, or
- in the allegation that the obligor is in default of an alternative arrangement (DELINQUENCY WITHHOLDING ACTIONS ONLY).

PROCEDURES

Caseworker

1. **Initial case management.** Before taking withholding action in this section, reviews the case for other required activities in step 1a through 1c below.

   a. **Hardship requests.** If at any point in these procedures the obligor claims the amount of withholding for support debt is not affordable, proceeds in section CS 510.5 concurrently with actions in this section. Explains to the obligor that a hardship review does not extend the time allowed for requesting a hearing on the NOW.

   b. **Redirecting Payments/Interstate Referral.** If applicable (see POLICY, Authority over Employer/Payor, Payee Designation) takes action as needed to confirm or gain authority for an OWI, or to send an interstate referral to the other state.

   c. **AIW Suppression.** Reviews the AIW suppression status on CAS; if applicable, sets or removes a suppression (see POLICY, Suppressing AIW). **IMPORTANT:** When setting a suppression, sets a tickler for a projected change in the case facts (e.g., resolution of the Letter of Delinquency, expiration of the stay), and reviews the suppression at that time. Removes the suppression as soon as the underlying case facts no longer apply.

2. **Letter of Delinquency.** Upon identifying a case where the conditions for issuing a Letter of Delinquency apply (see POLICY), immediately sets the AIW suppression on the CAS screen and proceeds in steps 2a through 2d below.

   a. Generates and sends by regular mail form CS-510.3B, Letter of Delinquency. Monitors for payment of the delinquency within 8 working days after the letter is issued.

b. If the obligor timely cures the delinquency by paying the amount in full, documents the facts on SEARCHS and takes no further action in this section. Does not remove the AIW suppression; the CSED may initiate withholding in the future only if a new delinquency occurs (meanwhile, suppression is needed to prevent AIW from generating an OWI for current support--see section 510.3).

If a new delinquency occurs, removes the AIW suppression and proceeds directly to step 3; a new Letter of Delinquency is not required.

c. If the obligor timely contacts the CSED and proves the delinquency does not exist, documents the facts on SEARCHS and takes no further action in this section. Does not remove the AIW suppression; initiation of any future withholding will require a Letter of Delinquency under the procedures in this step.

d. If the obligor does not timely cure or disprove the delinquency, documents the failure on SEARCHS, removes the AIW suppression, and proceeds to step 3.

(Note that partial payment of the delinquency, or proof that part of the delinquency is incorrect, does not prevent the CSED from taking delinquency withholding action in this section; however, the withholding action should reflect the payment or correction.)

3. **Identifying a case for notice; applying the time frames.** Identifies a case for NOW action in one of 3a through 3d below:

a. Upon being notified by SEARCHS that AIW has created a NOW in a case, immediately reviews the NOW and accompanying OWI and Debt Computation Worksheet for accuracy, and proceeds directly to step 4 to assemble and issue the NOW and OWI packages within two (2) working days.

b. Upon being notified by SEARCHS that AIW has created an OWI but no NOW in a case where the conditions for a NOW apply (see POLICY), immediately reviews the OWI for accuracy. Proceeds directly to step 4 to generate the NOW and Debt Computation Worksheet, and a corrected OWI if necessary, and to assemble and issue the NOW and OWI packages within two (2) working days.

(This situation may occur, for example, in cases where a NOW is required to change the withholding amount for current support, or where it would be beneficial to notice new arrears even though the arrears withholding amount will not increase.)

c. Upon manually identifying a case where the conditions for a NOW apply (see POLICY) **and a Letter of Delinquency is issued** in step 2, initiates a withholding action in steps 4 and 5 within 15 calendar days after the Letter of Delinquency is issued and the CSED identifies an employer or payor of income through new-hire reporting or other means. (This time frame is extended as necessary to allow time to receive or process any timely response to the Letter.)

d. Upon manually identifying a case where the conditions for a NOW apply (see POLICY) **and no Letter of Delinquency is issued** in step 2, initiates a withholding action in steps 4 and 5 within two (2) working days after
  - the CSED receives a new-hire report or learns of an income source subject to withholding from a court, another state, an employer, the FPLS, or another source recognized by the CSED, **and**
  - the conditions for issuing a NOW apply.

NOTE: Currency of Information. In cases where information concerning a possible income source is received three months or more after the information was last known to be true (for example, a quarterly wage report for a quarter ending more than three months before the current date), the caseworker may take verification action before sending the OWI. If verification reveals the obligor is no longer receiving income from the employer/payor, the OWI is not required. Verification action includes sending an Employer Verification form or contacting the employer/payor by telephone or e-mail. The action **must be initiated within two working days** after receiving the information, and prompt follow-up is required.

4. **Generating the NOW and OWI.** For non-AIW cases, determines the proper amounts to be included in the NOW and OWI (see POLICY), processes the SEARCHS NOI and OWI screens, and generates the documents. (NOI processing sets the declining balance(s) for current support, support debt, or both.)

For AIW and non-AIW cases, obtains signatures on, and assembles packages (1) and (2) below. Retains one original, signed NOW and one copy of the other documents for the case file.

EXCEPTION 1: AIW NOW Invalid. In certain situations the AIW process may create a NOW for new arrears based on a DBD comparison (see POLICY, Automated Income Withholding and the NOW, New Arrears), where the change in withholding would not be appropriate given the facts of the case. (For example, new arrears are being added to existing unpaid arrears, and the amount of the new arrears is relatively small; or, the new arrears are solely the result of employer annualization.) In questionable cases the guidance given in POLICY, Conditions for Issuing a Now, Additional Arrears, applies. If the notice action is not appropriate, the caseworker should destroy the AIW documents, update SEARCHS as applicable, and proceed in section 510.3 with an OWI for previously noticed amounts to the new employer.

EXCEPTION 2: AIW OWI Invalid. In other situations the AIW process may create a NOW with an OWI based on a second, part-time employer for the obligor. If the caseworker can determine within two working days that the new employment is secondary, and that proceeding with both employers may result in withholding for more than the noticed amounts, the caseworker may destroy the OWI (updating

SEARCHS as applicable), and issue the NOW package for the new arrears, with an amended OWI to the first employer (see section 510.3), if applicable.

(1) NOW PACKAGE:

(a) Form CS-510.1A, Notice of Withholding (NOW)(copy; or original and one copy if sheriff's service is used)--requires caseworker signature.

NOTE: Customizing NOW for Non-Compliance Basis. If the withholding action is based on the obligor's failure to comply with an alternative arrangement, **and there is no delinquency,** the NOW must describe the specific failure. Also, the CSED may not issue the OWI package below until the NOW is resolved. In this situation the caseworker should consult with the regional legal unit to adapt the NOW document for these differences.

(b) Form CS-510.1H, Notice of Withholding--Hearing Request (generated automatically with the NOW).

(c) [If NOW includes change in support debt:] Form CS-501.1A, Debt Computation Worksheet (copy)--must be attached to the NOW.

(d) [If employer/payor is known:] Copy of signed form FED-IW (see OWI package below).

(e) One of the following service documents, unless regular mail applies (see POLICY):
- Certified mail request--return receipt, restricted delivery (green card)
- Form CS-401.3C, Sheriff's Praecipe (original)
- Form CS-405.1, Notice and Acknowledgment of Receipt of Administrative Notice (if obligor may cooperate)--original and one copy.

If a NOW applies in more than one of the obligor's cases, issues and includes in the above package a separate NOW and Debt Computation Worksheet for each case.

(2) OWI PACKAGE (IF EMPLOYER/PAYOR KNOWN):

(a) Form FED-IW, Order to Withhold Income for Child Support(OWI) (original document)--requires signature of Administrator's designee (see NOTE below); amended version must be selected if a previous withholding order has been sent to this employer/payor.

(b) One of the following service documents:
- Acknowledgment of Receipt of Order(s) and Waiver of Service (half-page form available in the regions in hard copy)
- Certified mail request--return receipt (green card)
- Form CS-401.3C, Sheriff's Praecipe (original)

(Note that Montana law does not allow service of the OWI by regular mail.)

If the NOW package in (1) contains more than one NOW, combines the noticed amounts in one OWI, and adjusts the OWI as necessary to identify the multiple cases.

NOTE 1: Administrator's Designee. The CSED Administrator has designated the supervisor or the caseworker who prepared the OWI as the individual authorized to issue (sign) the document.

NOTE 2: Unknown Employer/Payor. If no employer/payor is known, the CSED proceeds as applicable in this section for service and resolution of the NOW; proceeds concurrently with income locate actions; and issues the OWI package when an employer/payor is identified.

NOTE 3: Delay for Resolution of Non-Compliance. If the withholding action is based on the obligor's failure to comply with an alternative arrangement, **and there is no delinquency,** the caseworker must arrange to delay issuance and service of the OWI package until the NOW is resolved.

5. **Serving the NOW and OWI; notifying the obligee.** Simultaneously proceeds in 5a through 5c below to secure service of the packages and to notify the obligee. (Note that for purposes of the time frames in step 3 the withholding action is initiated when the OWI is sent for service. In cases where the NOW is being used to determine the debt in the absence of an employer, the time frames for initiating the action do not apply.)

   a. Arranges for service of the NOW package by certified mail (restricted delivery), sheriff's or private process service, acknowledgment (see NOTE 1 below), or, if applicable, regular mail. When service is obtained, enters service information on the SEARCHS NOI screen; for regular mail presumes service on the third day after deposit in U.S. mail, unless the package is returned undelivered. (See POLICY, Service of the NOW, for requirements for use of regular mail or deemed service of process.)

   If service cannot be obtained, continues to make reasonable efforts to locate the obligor and to obtain service by any appropriate means. Except as stated in NOTE 3 below, does not remove the notice from the "unserved" report until service is obtained. At least as frequently as the report is issued, reviews the case for an opportunity to obtain service. Meanwhile, proceeds to monitor withholding. **Does not delay or discontinue withholding in this section for lack of service of the NOW.** If a service opportunity occurs, resumes action in this section; if significant additional arrears have accrued, identifies new withholding amounts and begins again at step 4.

   NOTE 1: Service by Acknowledgment. Special procedures apply for service by acknowledgment. The original and one copy of the Acknowledgment form must be sent with a self-addressed stamped envelope for the obligor's return. If the obligor does not respond in writing to the Acknowledgment within 20 calendar days after the date of mailing, the CSED must issue the package for service by sheriff's or private process service.

NOTE 2: NOW Unserved at Case Closure. If the case is being closed and the NOW is still unserved, the CSED must terminate the OWI. The CSED does not dismiss the NOW in this situation; the NOW will still apply if the case is reopened. At that time the CSED can either renew attempts to serve the existing NOW, or issue a new NOW.

NOTE 3: Removing a NOW from the Unserved Report. The caseworker may remove a NOW from the unserved report without actually obtaining service **only** when service of the NOW is no longer necessary--for example, when the CSED has issued a later NOW in the same subcase.

b. Arranges for service of the OWI package by acknowledgment, certified mail (return receipt requested), or sheriff/private process service. Upon obtaining service monitors for compliance; if the employer/payor fails to comply with the order, follows procedures in section CS 503.5, Administrative Civil Contempt.

Also monitors for any lapse in employment, and takes steps to locate other income or assets, or to pursue other enforcement remedies, as necessary.

NOTE 1: Employer Required to Resume Withholding after Lapse. If the obligor leaves employment, the OWI requires the employer/payor to retain the order, and to resume withholding if the obligor returns to employment at any time in the future. The CSED does not issue a new OWI for regained employment unless a withholding action to change the amounts is required in this section or section CS 510.3.

NOTE 2: Payments Received Prior to Resolution of NOW. The CSED does not delay processing of income withholding payments for resolution of the NOW. When the OWI is served, payments received are distributed by SEARCHS and disbursed to the appropriate payee according to regular time frames. If the NOW is later resolved for different withholding amounts, the CSED will modify the withholding order and adjust accounting as appropriate.

c. Prepares and sends to each affected obligee
   - form CS-510.8B, CP Action Letter, or form CSE-IRUP, Interstate Responding Update (Transmittal #2), informing the obligee of the withholding action;
   - a copy of the NOW; and
   - a copy of the Debt Computation Worksheet.

Note that it is not appropriate to send a copy of the OWI to the obligee.

EXCEPTION: Copies of the NOW and Debt Computation Worksheet are not required in interstate responding cases.

6. **Resolving the notice.** Upon obtaining service of the NOW in step 5a, monitors for a request for hearing within 10 working days after the date of service, and proceeds in 6a through 6c below.

   a. **Hearing requested.** If the obligor timely requests a hearing, proceeds to step 7.

   b. **NOW incorrect.** If the obligor timely contacts the CSED and provides proof that the NOW is incorrect, proceeds to amend or dismiss the NOW, as applicable, according to standard CSED procedures; updates the NOI screen as necessary and proceeds in 6b(i) or 6b(ii) below.

      i. **Dismissing--no hearing requested.** In the case of a dismissal, updates the OWI screen and modifies or terminates the OWI to return the withholding to the pre-NOW status. Sends a copy of the dismissal motion and order to each affected obligee; also notifies the obligee of the modified withholding as in step 5c. Monitors the withholding as applicable and takes no further action in this section.

      ii. **Amending--no hearing requested.** In the case of an amended NOW, proceeds as follows:

         A. **Amended amount lower.** If the combined withholding for current support and support debt in the amended notice is lower than the combined withholding under the original NOW, updates SEARCHS and modifies the OWI to reflect the corrected amounts.

         B. **Amended amount higher.** If the combined withholding in the amended NOW is greater than the amount in the original NOW, retains the existing OWI as if for an original NOW; upon resolution modifies the OWI to reflect the correct amounts.

      Proceeds to resolve the amended NOW as for an original NOW in steps 6a through 6c. Sends a copy of the amended NOW and Debt Computation Worksheet to each affected obligee, and notifies the obligee of any modified withholding, as in step 5c.

   c. **Default on NOW.** If the obligor does not timely request a hearing or prove the NOW is incorrect, updates the NOI screen for the NOW resolved. Monitors for any change in the case that could require withholding action, and takes no further action in this section.

   NOTE: Determination of Debt. In addition to completing due process for the income withholding action, resolution of the NOW also determines the debt for

CSED purposes. Subsequent enforcement actions requiring a sum-certain amount can proceed based on this determination.

7. **Processing a request for hearing (caseworker).** Upon learning that the obligor has requested a hearing on the NOW, monitors for notification from the Office of the Administrative Law Judge that the hearing has been granted. If the hearing is granted, **immediately** proceeds to step 8. If the hearing is not granted, proceeds as in step 6c above.

8. **Staying withholding.** Immediately upon learning that the hearing has been granted, modifies the withholding by proceeding simultaneously in 8a and 8b below, then proceeds to step 9.

   a. **Declining balances.** Except as noted below, processes the NOI screen to
      - modify the declining balance for support debt to the pre-NOW amount, less any payments received after the NOW was issued, and
      - retain the declining balance for current support at the NOW amount.

      In the case of an amended NOW, the "pre-NOW" amount for support debt is the amount in place before the original NOW; the "NOW" amount for current support is the amount in the amended NOW.

      EXCEPTION 1: Current Support Contested. If the obligor is contesting the amount of current support, the declining balance for current support should be returned to the pre-NOW amount, if different. If the obligor is contesting **only** current support, the declining balance for support debt should not be modified.

      EXCEPTION 2: Delinquency Withholding. If the withholding action is an initial delinquency action, and special circumstances in the case cause concerns about maintaining withholding while the case is contested, the caseworker should consult with the regional legal staff. It may be advisable to return both the current support and support debt declining balances to $0 and terminate withholding as in section CS 510.3.

      EXCEPTION 3: ALJ Stay. Upon the request of the obligor the ALJ may stay any increase in current support, support debt, or both by ordering the CSED to return the withholding to the pre-NOW amounts.

   b. **Withholding order.** Issues a modified OWI containing the withholding amounts entered in step 8a; serves the modified OWI on the employer/payor as in step 5b, and notifies each affected obligee of the new amounts as applicable in step 5c.

9. **Preparing for/participating in hearing.** After staying the withholding in step 8, proceeds in steps 9a through 9e below.

   a. **Contacting the obligor.** Contacts the obligor and attempts to resolve the issue(s) informally. Discusses any mistake(s) of fact the obligor is claiming (see POLICY, Basis for Contesting Withholding), and explains requirements as necessary. Proceeds in 9b through 9e according to the result of the contact.

b. **Request withdrawn.** If after the discussion the obligor no longer wishes to request a hearing, explains the procedures for withdrawing the hearing request. If the request is withdrawn, enters the resolved date on the NOI screen, modifies the withholding to reflect the noticed amounts, and notifies each affected obligee as applicable in step 5c. Monitors withholding, and takes no further action in this section.

c. **Dismissing the NOW.** If the obligor proves that withholding action is not appropriate, dismisses the NOW according to standard CSED procedures. Updates the NOI screen, modifies/monitors the withholding as applicable, and notifies each affected obligee of any modified amounts as applicable in step 5c. Takes no further action in this section.

d. **Amending the NOW.** If the obligor proves the NOW is incorrect, amends the NOW according to standard CSED procedures, and updates the NOI screen. If the total withholding in the amended NOW is less than the total withholding in the OWI issued in step 8 (or in step 5 if there was no stay), modifies the withholding to reflect the amounts in the amended NOW. Sends to each affected obligee a copy of the amended notice and corresponding Debt Comp, and notifies the obligee of any modified amounts resulting from this step, as in step 5c.

   i. If the obligor does not withdraw the original hearing request, prepares for hearing on the original request (and any subsequent request received on the amended NOW), and proceeds to step 9e.

   ii. If the obligor withdraws the hearing request upon receipt of the amended NOW, resolves the amended NOW as in step 6c; modifies withholding if necessary to reflect the amounts in the amended NOW, and takes no further action in this section.

e. **Proceeding to Hearing.** If the matter cannot be satisfactorily resolved in substeps 9a through 9d above (request withdrawn or NOW dismissed), proceeds in substeps 9e(i) through 9e(iii) below.

   i. **Preparing evidence and testimony.** Prepares testimony, arranges for witnesses, and assembles exhibits needed to present evidence on the prima facie case (see step 11) and on any other issues identified. Prepares a witness and exhibit list and submits the original list and exhibits to the OALJ, with copies to the obligor, by the exhibits due date.

   If an amended NOW was issued, includes in the hearing exhibits both the original and the amended NOW.

ii. **Hearing checklist.** After the obligor has received the exhibits in 9e(i) above, contacts the obligor and identifies any elements of the CSED's prima facie case the obligor intends to contest at hearing, using form CS-510.1C, Hearing Checklist, as a guide. Refers the obligor to the exhibits as necessary. Completes the Hearing Checklist according to the results of the discussion, and sends the original to the OALJ, with a copy to the obligor, before the hearing date; maintains a copy for the case file.

NOTE: Timing of Obligor Contacts. The caseworker may, at his or her discretion, combine the contact in this substep (hearing checklist) with the contact in substep 9a (issue resolution). However, the requirement to provide the exhibits to the obligor before proceeding with the checklist discussion still applies.

iii. **Appearing at the hearing.** Appears at the hearing as a witness; gives evidence as requested by the Administrative Law Judge (ALJ). If applicable, explains which months are included in the portion of the support debt that may be contested. Monitors for receipt of a proposed decision and order, any motion for review, and a final decision and order.

Office of the Administrative Law Judge (OALJ)

10. **Processing a request for hearing (OALJ).** Upon receiving a request for hearing on a Notice of Withholding, determines whether the request is timely (received within 10 working days after the date of service). If so, obtains a determination from the Administrative Law Judge (ALJ) on whether the request contains a mistake of fact under MCA 40-5-412(5) (see POLICY, Basis for Contesting Withholding).

    a. If the request is not timely, or if the request does not contain a mistake of fact, denies the request according to standard OALJ procedures.

    b. If the request is timely and contains a mistake of fact, sends a facsimile copy to the caseworker and identifies any dates the caseworker is unavailable for hearing. Sets the hearing time and date and other due dates (witness and exhibit lists, exchange of exhibits, requests for discovery or subpoenas), and issues a notice of hearing and scheduling order as in ARM 37.62.919. Sends an informational copy of the notice of hearing to the obligee.

    If the obligor requests a stay of the withholding for current support, support debt, or both (and the caseworker has not already satisfied the request in step 8), obtains a ruling from the ALJ and issues an order granting or denying the stay.

Administrative Law Judge (ALJ)

11. **Conducting the hearing; entering the decision and order.** Within 60 days after receipt of the hearing request in step 10, conducts the hearing according to the

requirements of ARM 37.62.941 through 945. Limits the hearing to the mistake(s) of fact alleged by the obligor and the following required elements of the CSED's prima facie case:

(1) Whether the CSED is legally authorized, by application or referral, to act in this case.

(2) Whether the CSED served the NOW on the obligor.

(3) Whether the CSED has subject matter jurisdiction to enforce support via income withholding. Specifically, whether there is a support order in effect **and** the CSED asserts a delinquency or other basis for the withholding action.

Enters a proposed decision and order, reviews and takes necessary action on any motions for review, and enters a final decision and order as in ARM 37.62.949 and 951.

OALJ

12. **Issuing the hearing results.** Sends copies of the proposed decision and order to the obligor, the obligee, and the caseworker. For any motions for review received, schedules due dates or oral arguments as required by the ALJ.

    Within 60 days after the hearing in step 11 was conducted, sends copies of the final decision and order to the obligor, the obligee, and the caseworker, retaining the original for the OALJ file. Monitors for any petition for judicial review.

Caseworker

13. **Enforcing the hearing results.** Immediately upon receipt of the final decision and order entered in step 11, updates the SEARCHS NOI screen for the NOW resolved. Modifies withholding in steps 13a and 13b below according to the results of the hearing.

    a. Processes the NOI screen as necessary to change the declining balances for current support and support debt to the amounts determined in the decision and order.

       Requests SEARCHS accounting actions as needed, including account adjustments, obligor refunds, or obligee accounts receivable. (Note that refunds and receivables are more likely when service of the NOW has been delayed.)
       If no change is necessary, monitors withholding compliance (or, if no withholding is in place, monitors for a change in the case that could require withholding action), and takes no further action in this section.

b. For any changes entered in step 13a, issues and serves an OWI for the correct amounts as in steps 4 and 5; notifies each affected obligee of the new amounts as applicable in step 5c. Monitors withholding compliance and takes no further action in this section.

SUPERSEDES

CS 510.3, Withholding Action--Without Notice, May 19, 2003.

REFERENCES

42 USC § 666(b); 45 CFR 308.2; MCA Title 40, Chapter 5, Part 4.

DEFINITIONS

IMMEDIATE INCOME WITHHOLDING--Withholding for current support that is available under Montana or other state law without notice to the obligor. A case qualifies for immediate withholding when both (1) and (2) below apply:

(1) The child support order was issued or modified in Montana after January 1, 1990,
-OR-
the child support order was issued in another state after laws requiring immediate withholding were enacted (and the CSED is able to timely determined these facts),
-OR-
a child support order issued in Montana or another state specifically requires income withholding for current support.

(2) The support order does not exempt the obligor from immediate withholding. (A support order may specify an exemption on the basis of (1) good cause based on the best interests of the child or (2) an alternative arrangement between the parties for payment of support.)

GAP SUPPORT ORDER--A support order entered by a Montana district court after January 1, 1990, but before April 24, 1991, that specifically requires the Montana IV-D agency to enforce immediate income withholding. These orders were entered during the statutory "gap" between

- the effective date of immediate income withholding in Montana, and
- the effective date of the Montana law allowing district courts as well as the IV-D agency to administer immediate withholding.

A support order entered by a Montana district court that exempts the obligor from, or is silent on, immediate income withholding, is not a "gap" order for purposes of this section, regardless of the date of entry.

WITHHOLDING NOTICE--A Notice and Order for Withholding; or, if issued prior to this writing, a Notice of Intent to Withhold Income, or a Supplemental Notice of Intent to Withhold. When referring to a previous notice, a withholding notice may also include a Voluntary Withholding Authorization.

WITHHOLDING ORDER--An Order to Withhold Income for Child Support; or, an Order to Withhold Income or Order to Modify Withholding issued prior to this writing.

POLICY

Applicability. The procedures in this section apply when the CSED takes a withholding action that does not require notice and opportunity for hearing (see Conditions for Taking

Withholding Action Without Notice, below). In cases where notice is required, procedures in section CS 510.1, Withholding Action--With Notice, apply.

Withholding Action. The CSED takes income withholding action in this section by issuing an Order to Withhold Income for Child Support (OWI) to the employer or other payor of income. The action may be an initial action in the case, a modification of a previous action, a re-issuance of an existing action to a new employer/payor, or a termination of the action.

Authority over Employer/Payor, Payee Designation. Two types of authority are required for the CSED to issue an OWI. First, the CSED must have authority over the employer/payor; this occurs when either of the following conditions applies:
(1) The CSED has personal or *in rem* jurisdiction over the employer/payor because the employer/ payor is located in Montana, does business in Montana, or has minimum contacts with Montana.
(2) The employer/payor is located in a state that has adopted the income withholding provisions of the Uniform Interstate Family Support Act (UIFSA).
If neither condition applies, the CSED cannot issue the OWI; instead, it must send an interstate referral for enforcement to a state that does have jurisdiction over the employer/payor. However, at the time of this writing, every state had adopted the income withholding provisions of UIFSA. **IMPORTANT: The CSED does not need personal jurisdiction over the obligor to take withholding action against his or her income.**

Second, the CSED must have authority to order the employer/payor to make payments directly to the CSED. This authority exists when
- the underlying support order requires payment to the CSED, or
- the CSED has taken the proper steps to redirect support payments (see section CS 503.4, Redirecting Support Payments, for applicable conditions and procedures).

If the CSED does not have this authority and cannot gain it under section CS 503.4, it cannot issue an OWI; instead, the CSED must send an interstate referral for enforcement to the state that issued the support order.

Amounts in the OWI. The CSED includes in the OWI the amounts to be withheld each month for current support and any adjudicated support debt, as well as the total (adjudicated) debt amount. Support debt includes amounts owing for arrears, fees, fines, interest, or medical costs.

For purposes of this section "adjudicated" amounts are amounts determined by an administrative or judicial proceeding specifically authorizing income withholding; adjudicated amounts may include arrears or other past-due amounts or assessments. The proceeding may be a contested case, a consent to withholding for sum-certain amounts, or some other entry of judgments by Montana or another state. (Note that unadjudicated arrears, or judgments entered without specific authority for income withholding, require notice under section CS 510.1 before the CSED can include them in an OWI.)

The monthly withholding for support debt is 1/24th of the total unpaid amount, or 25% of the obligor's net income, whichever is more. In a withholding action to add new amounts to the total support debt, the monthly withholding must be recalculated at 1/24th of the new total. (The new total is equal to the support debt from the previous OWI, less payments received, plus the amount being added.) However, if there is no new support debt and only the amount of current support is being changed, the existing withholding for support debt is not recalculated.

Conditions for Taking Withholding Action Without Notice. The CSED issues an OWI in this section when an employer/payor is identified and one or more of the following conditions applies:

(1) **Immediate withholding.** Immediate income withholding applies (see DEFINITIONS) and there is no withholding order in place for the current employer/payor. This situation may occur when the CSED opens or reopens an enforcement case, the support order is modified to include immediate withholding, or a new employer/payor is identified. [Original OWI]

(2) **Additional adjudicated debt.** A withholding order is in place and the CSED has identified additional support debt that was previously adjudicated. [Amended OWI]

(3) **Reopened case.** A case is reopened in which a previous withholding notice still applies; the notice must have been resolved in favor of withholding, or must still be pending (see section CS 510.1). [Original OWI]

(4) **Debt paid in full.** A withholding order is in place for current support and support debt, and withholding or other collections have reduced the debt amount to $0. [Amended OWI]

(5) **Voluntary withholding.** The obligor signs a Voluntary Withholding Authorization (VWA) for the amount of current support and, if applicable, the agreed total support debt and a monthly amount toward it. Note that a VWA, once entered, acts like a resolved withholding notice, and the obligor may not rescind it. [Original or amended OWI]

NOTE: Restrictions on Amounts Listed in VWA. Except as noted below, the CSED will agree to VWA amounts only when
- current support in the VWA equals the amount in the existing support order;
- total support debt in the VWA equals the support debt amount known or proved to the caseworker for the period in question; and
- withholding for support debt in the VWA is calculated at the standard rate (1/24th of the VWA support debt or 25% of net income).

Like any other withholding notice, the VWA must contain the full amount of withholding for support debt regardless or any hardship adjustment to the actual withholding.

EXCEPTION 1: For a VWA being processed simultaneously with case opening, where the CSED has not yet obtained the support order for the case file, amounts for current support must be correct to the best of the caseworker's immediate knowledge.

EXCEPTION 2: The total support debt must accurately reflect payments and obligations for the period specified; however, months not included in a previous withholding notice, or fees or fines to which the obligor will not agree, may be omitted if advantageous in enforcing the case.

(6) **Change in current support.** A withholding order is in place and there is a change in the amount due for current support that can be determined directly from the text of the support order itself. The change may be a replacement or modification of the support obligation, or the result of a specific change clause in the support order. [Amended OWI]

(7) **Hardship adjustment.** A withholding order is in place and the CSED has
- granted a hardship adjustment lowering the withholding for support debt, or
- terminated an existing hardship, raising the withholding for support debt.

(See section CS 510.5, Hardship Adjustments.)
[Amended OWI]

(8) **Loss of withholding authority.** In a case where a withholding order is in place, the CSED has lost the ability to withhold income. [Termination OWI]
Reasons for loss of withholding authority may include any of the following:
(a) A bankruptcy court or other tribunal of appropriate jurisdiction has imposed a stay on collection actions against the obligor's assets.
(b) A judicial review of a CSED final agency decision has determined that income withholding is not appropriate.
(c) The case is being closed, and any support debt due the State of Montana is paid in full.

EXCEPTION: "Gap" Order Cases Not Closable. If the existing support order is a "gap" order (see DEFINITIONS), and the case would qualify for closure under section CS 201.5 based on a request by the non-public assistance obligee, the CSED may **not** close the case until the support order is appropriately modified or the child is emancipated. The modified order must either exempt the obligor from immediate income withholding, or allow immediate withholding through the Clerk of Court.

(d) The enforceable support obligation is terminated (e.g., the children have emancipated, or the children have changed custodians and the support order does not apply to the new custodian), and any support debt enforceable by the CSED is paid in full.

Note that termination of employment is not a basis for terminating a withholding order. If there is a lapse in the obligor's employment, the OWI instructs the employer to retain the order and to resume withholding if the obligor is employed in the future.

Automated Income Withholding. The OWI will be generated automatically by the SEARCHS automated income withholding (AIW) function, without an accompanying notice, when **all** of the following conditions apply:

OBLIGOR CONDITIONS

(1) **Obligor match.** A match occurs between an AIW locate source and a SEARCHS obligor. AIW locate sources are the State Directory of New Hires, the National Directory of New Hires, and Unemployment Insurance.

(2) **New employer.** There is no existing OWI to the employer/payor identified by the locate source.

(3) **Simple structure for fees.** If there is more than one open case or subcase for the obligor, there is no fee account balance greater than $0 for any of them.

(4) **Non-multiple regions.** If there is more than one open case for the obligor, all of the open cases are in the same region.

CASE CONDITIONS

(5) **Not suppressed.** The AIW function is not suppressed on the CAS screen.

(6) **Case characteristics.** The case qualifies for AIW by its characteristics; that is,
- the case is open;
- the case is not assigned to region 90, 95, or 99;
- the case type on the IST screen is not interstate initiating (account types do not matter); and
- the case has an open ADMN or CORT order on the SOD screen.

OMIT-NOTICE CONDITIONS

(7) **No new arrears.** There are no new arrears in the case, or there are new arrears but there is an unresolved NOW in process in that subcase already.

When all of the above conditions apply, the AIW function will generate an OWI to the new employer and build the appropriate OWI record on SEARCHS. Amounts in the OWI are taken from the applicable AIW master order (see NOTE 1 below). If no applicable master exists, AIW will use amounts from all applicable NOI records for the obligor (see NOTE 2 below). If there is no applicable master and no applicable NOI record, AIW will generate the OWI for current support only, based on the open current support accounts on SEARCHS. In this situation AIW will also build and resolve an NOI record for current support.

When any of the above conditions does not apply, the caseworker must generate the OWI using regular SEARCHS document generation processing.

When all of the above conditions apply **except that there are new arrears and no NOW already in process**, AIW will generate a NOW as well as an OWI. (In this situation, refer to the AIW policies and procedures in section CS 510.1, Withholding Action --With Notice.)

NOTE 1: Applicable Master. A master order is created by the caseworker for obligors with special circumstances--for example, a hardship adjustment of the arrears amount. A master order is "applicable" if the account types in the master match the open account types on SEARCHS. For purposes of this test, there is a match if both the master and SEARCHS contain current accounts only, if both contain arrears accounts only, or if both contain current and arrears accounts. Assigned or unassigned subtypes do not matter.

NOTE 2: Applicable NOIs. An "applicable" NOI record is one that
- is the most recent record for a subcase,
- contains at least one positive amount, and
- lists a resolved notice or a NOW.

Suppressing AIW. SEARCHS automatically suppresses the AIW function on the CAS screen whenever the case status code is changed to, or entered as, a Native American Jurisdiction (NAJ) code. Certain other one-time suppressions were also set by SEARCHS during the September 2003 AIW case conversion process. The caseworker may remove an auto-suppression at any time, if case facts indicate that AIW-generated documents would be appropriate.

The caseworker can also manually suppress the AIW function at any time. However, manual suppression is limited by policy to situations where
- the support order contains an exemption from income withholding; or
- a stay of enforcement issued by an appropriate tribunal is in effect; or
- the CSED has not yet obtained authority to redirect payment of withheld income in the case (see Authority over Employer/Payor, Payee Designation); or
- the reason for lifting a previous auto-suppression no longer applies; or
- there is reason to believe an AIW action would be inappropriate **and** the supervisor approves the suppression.

PROCEDURES

Caseworker

1. **Initial case management.** Before taking withholding action in this section, reviews the case for other required activities in steps 1a through 1d below.

   a. **Hardship requests.** If at any point in these procedures the obligor claims the amount of withholding for support debt is not affordable, proceeds in section CS 510.5 concurrently with actions in this section.

b. **Redirecting Payments/Interstate Referral.** If applicable (see POLICY, Authority over Employer/Payor, Payee Designation) takes action as needed to confirm or gain authority for an OWI, or to send an interstate referral to the other state.

c. **AIW Suppression.** Reviews the AIW suppression status on CAS; if applicable, sets or removes a suppression (see POLICY, Suppressing AIW). **IMPORTANT:** When setting a suppression, sets a tickler for a projected change in the case facts (e.g., expiration of the stay of enforcement), and reviews the suppression at that time. Removes the suppression as soon as the underlying case facts no longer apply.

d. **Creating an AIW master order.** When the amounts to be included in a withholding order are different from the monthly amounts for current support and payment of support debt listed on the SEARCHS NOI screens for the applicable subcases, creates an AIW "master" order on SEARCHS containing the correct amounts. Deletes or updates the master when the amounts no longer apply.

   A master withholding order may be needed, for example, to adjust the withholding for arrears based on a hardship; to adjust current or arrears withholding based on the special requirements of the state that issued the support order; or to comply with a court order resulting from a challenge to the CSED's standard withholding amounts.

e. **Updating NOI Amounts.** Whenever the current support obligation changes and the change does not require a new notice (for example, the support order is modified), or the income withholding DBD for arrears reaches $0, updates SEARCHS withholding amounts by building a new NOI record. Proactive update is essential for AIW accuracy in cases where there is no master withholding order and AIW relies on NOI amounts.

2. **Voluntary withholding.** In a case where the obligor requests initiation or modification of withholding and the requested terms and amounts are agreeable to the CSED (see POLICY, Conditions for Taking Withholding Action Without Notice--Voluntary Withholding), prepares form CS-510.4A, Voluntary Withholding Authorization. Sends the form to the obligor by regular mail and awaits return.

   If the obligor returns the signed and notarized Authorization, proceeds to step 3. Otherwise, proceeds in this section or section CS 510.1 as applicable.

   NOTE: Considerations for Using a VWA. A VWA may be useful in situations where the obligor's consent will overcome an existing barrier to enforcement in the case--for example, in cases involving Native American jurisdiction, interstate initiating requirements, or incarcerated obligors. The VWA is also valuable in cases where it is used in place of a NOW, as it provides a written determination of the debt for the time periods included.

3. **Identifying a case for withholding action; applying the time frames.** Identifies a case for OWI action as follows:

   a. Upon being notified by SEARCHS that AIW has created an OWI in a case, immediately reviews the OWI for accuracy, and proceeds directly to step 4 to assemble and issue the OWI package within two (2) working days.

   b. Upon manually identifying a case where the conditions for issuing an original or amended OWI apply (see Conditions for Taking Withholding Action Without Notice, POLICY), initiates the appropriate withholding action in step 4 within two (2) working days after
      - the CSED receives a new-hire report or learns of an income source subject to withholding from a court, another state, an employer, the FPLS, or another source recognized by the CSED, **and**
      - the conditions for issuing an original or amended OWI apply.

      NOTE: Currency of Information. In cases where information concerning a possible income source is received three months or more after the information was last known to be true (for example, a quarterly wage report for a quarter ending more than three months before the current date), the caseworker may take verification action before sending the OWI. If verification reveals the obligor is no longer receiving income from the employer/payor, the OWI is not required. Verification action includes sending an Employer Verification form or contacting the employer/payor by telephone or e-mail. The action **must be initiated within two working days** after receiving the information, and prompt follow-up is required.

   c. Upon manually identifying a case where the CSED no longer has authority to withhold income in this or any other case against the obligor (see POLICY, Conditions for Taking Withholding Action Without Notice, Loss of Withholding Authority), **immediately** initiates the appropriate action to terminate withholding in step 4.

   NOTE: Non-AIW CASES. Cases not identified by AIW where manual initiation of the withholding action is necessary may include, for example, cases where there is no new-hire report (the employer is newly discovered by the CSED but the obligor is not newly hired), or where the existing withholding order must be amended or terminated, or where AIW has been suppressed but withholding action is still needed.

4. **Issuing/maintaining the OWI.** Issues, serves, and monitors the OWI by proceeding in 4a through 4f below. (For AIW cases begins at step 4b with the signature of the designee.)

   a. [ORIGINAL/AMENDED OWI ONLY:] Determines the proper amounts to be included in the order (see POLICY). If withholding applies in more than one of the obligor's cases, combines the amounts in one OWI. Note that an amended combined OWI is required if withholding is being terminated in one case and maintained in another.

b. Processes the SEARCHS NOI and OWI screens as necessary. (The withholding order cannot be generated on SEARCHS unless a "notice" exists on the NOI screen. Also, the NOI screen creates any new declining balances needed for the withholding order.)

   Generates form FED-IW and obtains the signature of the Administrator's designee. (The form may be generated in the original, amended, or termination version, according to the conditions on which it is based.)

   NOTE: Administrator's Designee. The CSED Administrator has designated the supervisor or the caseworker who prepared the OWI as the individual authorized to issue (sign) the document.

   EXCEPTION: AIW Documents Invalid. In certain situations the AIW process may create an OWI that would not be appropriate given the facts of the case. (For example, the new-hire report may be for a second, part-time employer, and proceeding with the AIW withholding would result in total withholding for more than the noticed amounts.) If the caseworker can determine within two working days that the withholding action is not appropriate, the caseworker should destroy the OWI, update SEARCHS as applicable, and proceed in this section with an OWI to the new employer for an appropriate amount (if any).

c. Arranges for service of the OWI, and enters the date served on the OWI screen. Service may be accomplished by
   - acknowledgment (Acknowledgment of Receipt of Order(s) and Waiver of Service--half-page form available in the regions in hard copy);
   - certified mail (return receipt requested); or
   - personal service by sheriff or private process server; or
   - [TERMINATION ORDERS ONLY:] regular mail.

   Note that for purposes of the time frames in step 3, the OWI is "issued" when it is sent for service in this substep (4c).

d. Concurrently with sending the OWI for service in step 4c, prepares and sends to each affected obligee form CS-510.8B, CP Action Letter, informing the obligee of the withholding action. (Note that it is not appropriate to send a copy of the OWI to the obligee.)

e. Monitors for employer/payor compliance with the OWI. If the employer/payor fails to comply, follows procedures in section CS 503.5, Administrative Civil Contempt. Otherwise, takes no further action until a change requiring action in this section or section 510.1 occurs.

f. ["GAP" ORDERS ONLY:] Upon receiving a request for case closure from a non-public assistance obligee in a case with a "gap" support order (see DEFINITIONS), explains the case cannot be closed until the support order is modified or the child is emancipated. (Note that this restriction applies even in cases where there is no withholding order in place because the CSED cannot locate an employer/payor.)

SUPERSEDES

CS 510.5, "Hardship Adjustments," May 23, 1998

REFERENCES

MCA 40-5-206 and 40-5-416; ARM 46.30.1213 through 1217

POLICY

Hardship Determination. Where income withholding is used to collect a support debt, Montana law allows the CSED to determine and order an amount for satisfaction of the debt that is less than the maximum permissible amount, if the obligor can show that substantial hardship will result if the maximum amount is implemented or continued.

Administrative rules relating to income withholding further define the conditions under which the CSED may grant a "hardship adjustment." Specifically, one or more of the following conditions must apply:

(1) Extraordinary costs or expenses for special medical, dental, and mental health needs have been incurred by the obligor or the obligor's dependents; these costs are actually being paid by the obligor; and the obligor is not being reimbursed by insurance.

(2) Special costs or expenses directly related to the obligor's ability to earn income have been incurred by the obligor; nonpayment of these costs will result in a major loss of income.

(3) The total income of the obligor's household only minimally meets the subsistence level for food, housing, clothing, and other necessities as established by the U. S. poverty guidelines.

The Administrative rules require that the CSED, in conducting a hardship review, apply a formula that takes into consideration the net income and assets of the obligor's household, the special expenses in (1) and (2) above, the applicable U.S. Poverty Guidelines, and the obligor's support obligations. The CSED's formula uses these required elements to determine the funds available for payment of the support debt; the formula then calculates the amount to be withheld by taking a percentage of the available funds.

The CSED uses a Hardship Adjustment Worksheet to show the step-by-step operation of the above formula. Although the hardship calculation may appear in places to follow the same format as the guidelines calculation described in section CS 404.1, the two determinations are based on different elements and principles, and are performed for different purposes. Amounts and assumptions used in one calculation should not be transferred automatically to the other.

Screening Hardship Requests. Hardship adjustments are granted at the discretion of the CSED. Because the minimum amount available through a hardship adjustment is $25, the CSED generally declines, for practical reasons, to perform a hardship review if either of the following sets of circumstances applies:

(1) Withholding is noticed or ordered for support debt (with or without current support), and the amount toward the support debt is less than or equal to $25. (A hardship determination is not needed--the existing withholding for support debt is appropriate.)

(2) Withholding is noticed or ordered for current support plus support debt; the withholding for support debt is set at 25% of net income, and is greater than $25; and 1/24th of the support debt would be less than or equal to $25. (A hardship determination is not needed--the amount withheld for support debt should be changed to 1/24th of the support debt.)

Where the CSED is withholding for support debt in more than one case, the above criteria are applied using a minimum of $25 times the number of cases.

Criteria for Accepting Requests for Hardship Review. Only one request for a hardship review is available to the obligor for each claimed incidence of hardship. The CSED will grant additional requests only upon a showing of circumstances not existing at the time of the original determination. Also, the CSED will accept requests for review only when withholding for support debt is in place or has been noticed.

Household Member. For hardship determination purposes, a “household member“ is any of the following people actually living in the household: the obligor, the obligor’s related dependents, and--if the obligor’s current spouse is receiving income--the current spouse and the current spouse’s related dependents. Any other related or unrelated persons living in the household, and any other dependents living outside the household, are not included as household members. Income, assets, and deductions for a household member are determined in the same way as for the obligor. The subsistence allowance used in the hardship calculation is determined according to the number of household members.

Worksheet Amounts. The CSED gathers information for the hardship calculation using the Financial Hardship Affidavit. Information from the affidavit, and other known information, is entered in the calculation via the CSED’s Hardship Adjustment Worksheet. Worksheet amounts are limited to those in the following seven categories:

(1) Income. Income means all cash earned or received by any member of the obligor’s household, except amounts listed under EXCLUSIONS below. Non-cash benefits and imputed earnings are not included in income for purposes of hardship determination. A household’s income level may remain constant from month to month or may vary--see “Variable Income Levels” later in this POLICY to determine monthly amounts for variable income.

Typical sources of income are salaries, wages, tips, commissions, bonuses, severance pay, interest, dividends, trust income, student subsidies, self-employment income, government and disability benefits, cash public assistance, and child or spousal support.

For purposes of hardship calculation, income from these sources is listed at the gross amount. Gross salary or wage income should also include any earned income credit included in the paycheck. Gross self-employment income is defined as gross receipts less actual (cash) costs of (1) goods sold and (2) necessary business expenses.

EXCLUSIONS: The following amounts are excluded from income in a hardship calculation:

(1) One-time, unearned lump sums. Examples are gifts, inheritances, lump-sum disability payments, judgment awards, gambling winnings, and proceeds from loans or the sale of assets.

(2) Reimbursements, allowances, and other "pass-through" amounts. Payments received by a household member toward specified out-of-pocket costs are excluded from income to the extent the costs are actually paid and proof of payment is provided. Amounts exceeding actual costs, or designated for general living expenses, are not excluded. Examples of excluded amounts are reimbursements or advances for actual travel, medical, or training costs; and student subsidy amounts applied to tuition, books, and fees.

(3) Benefits received in connection with the disability of a child in the household, where the child is not the obligor's. (Disability benefits received in connection with the disability of any other household member are included in income, because the obligor can claim expenses related to that disability under item (5).)

(2) Assets. Assets considered for purposes of hardship determination are limited to those that (a) belong to a household member, (b) can be converted to cash at any time, such as bank accounts, stocks, salable bonds, certificates of deposit, etc., and (c) are not producing income included in the hardship determination. The CSED attributes income to these assets using the most recent U.S. Treasury 10-year constant maturity rate, listed in the Hardship Bulletin preceding this section.

(3) Mandatory Deductions from Income. The following deductions from income are allowed for purposes of hardship determination:

(a) Income taxes. The CSED estimates the total amount of federal and state income tax payable by first determining
- the combined taxable income for all household members (total income from item (1) above, less any tax-exempt income identified by the caseworker or listed on the Financial Hardship Affidavit),
- the obligor's tax filing status (single or married, from the Financial Hardship Affidavit), and
- the number of tax exemptions the obligor can claim (from the Financial Hardship Affidavit--usually the total number of people in the household plus any dependents outside the household not claimed by another taxpayer). Note

that the number of tax exemptions is not necessarily the same as the number of household members defined for hardship calculation purposes.

The tax is then estimated using the tax tables maintained on SEARCHS. This estimate may be replaced by the actual dollar amount of taxes paid as shown on the obligor's tax returns, or by $0 if the available information shows the obligor will not be required to pay any taxes.

(Note that the SEARCHS tax tables, as well as the taxpayer's pay stubs, give only the required withholding amounts, not the actual taxes payable from the tax return. The hardship calculation relies on the withholding amounts only when actual amounts from the tax return are not available.)

Taxes on self-employment income are calculated as described above EXCEPT that the taxable income is the amount in item (1) above (gross receipts less cash costs) LESS any non-cash expenses claimed for tax purposes, such as depreciation. Because of the many rules concerning deductible business expenses, tax amounts should be taken directly from the self-employed person's tax returns wherever possible.

(b) Social security (FICA) and Medicare tax. This is a percentage (maintained on SEARCHS) of the total income from wages, salaries, and related earnings (for example, tips, commissions, bonuses, severance pay). For self-employment income the SEARCHS-calculated tax should be doubled, since the percentage for self-employed earnings is twice that for wages.

(c) Other mandatory deductions. These amounts are limited to **mandatory** (employer-required) deductions from earnings for retirement, disability insurance, medical insurance, and union dues.

Medical insurance deductions that are not mandatory are treated as follows: amounts for coverage of the obligor's children, in or outside the household, are included under item (6) support obligations (see exception in item (6) for prerequisite coverage); amounts for coverage of any other person are not allowed as deductions or expenses in the hardship calculation.

IMPORTANT: The expenses described in items (4), (5), and (6) below are allowed only to the extent they are supported by receipts or other documentation of actual payment. Also, expenses are limited to those incurred by the obligor, or in the case of item (5), the obligor's dependents. Other household members' expenses are not allowed.

(4) Special Expenses--Income Earning. The hardship determination includes any special costs or expenses that
- are directly related to the obligor's ability to earn income available for withholding, and
- if not paid, would result in a major loss of income.

Examples of special income-earning expenses include the cost of special clothing, tools, or equipment required for the job; the cost of day care required to allow the obligor to attend work (day care must be for the obligor's dependents, or for household members who are dependents of the income-earning current spouse); union dues not already included in item (3)(c); the cost of court-ordered activities (payments on judgments, counseling), where failure to obey the order would result in jail, loss of driving privileges, or other events affecting income earning; and repayment of student loans, where the obligor is earning income in a field related to the education received.

(5) Special Expenses--Extraordinary Medical. The hardship determination includes extraordinary medical, dental, or mental health costs that are
- incurred by the obligor or the obligor's dependents,
- actually paid by the obligor, and
- not reimbursed by insurance.

"Dependents" for medical purposes are the obligor's children, the obligor's current spouse, and any other dependents of the obligor in or outside the household. For example, an obligor's dependent parent is included; an obligor's stepchild is not.

"Extraordinary" costs are not limited to catastrophic accidents or illnesses, but may include ongoing prescriptions or treatments if they impose a significant financial burden on the obligor.

(6) Support Obligations. For purposes of hardship determination the following expenses for current support are allowed:

(a) Amounts the CSED is enforcing for child support, spousal support, and medical support other than health insurance.

(b) Other amounts the obligor actually pays on a regular basis for child support, spousal support, and medical support other than health insurance, for persons outside the household.

(c) Amounts the obligor actually pays for health insurance for the obligor's children, whether in or outside the household. (If under the terms of the insurance plan the obligor is required to maintain coverage for other people in order to obtain coverage for the children, the cost of the "prerequisite" coverage is also allowed under this item.)

(7) Subsistence Allowance. The subsistence allowance is equal to the U.S. Poverty Guidelines amount for the number of household members. Poverty Guidelines amounts are listed in the Hardship Bulletin preceding this section. In unusual situations where a major component of the cost of living is entirely avoided because the household receives a non-cash benefit such as, for example, free rent, the subsistence allowance may be adjusted downward. The amount of the adjustment should be based on the percentage associated with the major component, such as is found in the

ACCRA (American Chambers of Commerce Researchers Association) Cost of Living Index, or other appropriate data. Primary components of the cost of living include food, clothing, housing, utilities, health care, and transportation. Partial avoidance of any of these costs is not a basis for reducing the subsistence allowance.

Variable Income Levels. Where income level is expected to fluctuate over the course of a year because of temporary or seasonal work or other factors, monthly income for purposes of hardship adjustment may be determined by either of the following methods (or any logical combination of the two):

(1) "Annualize" the income by calculating the total income for one full year and dividing by 12. If a hardship adjustment is appropriate, the adjustment should extend for the full 12 months, to allow the ratio of payments to income to reach the level upon which the adjustment was based.

(2) Perform a separate hardship calculation for each period associated with a different monthly income level. If this method is used, the duration of any resulting adjustment should be limited to the period that the corresponding income level will be in effect.

Determining the Support Debt Payment. Upon obtaining the household's net available resources from the worksheet, the CSED applies the appropriate percentage from the table below to determine the adjusted monthly support debt payment. (If the adjusted amount is more than the amount currently ordered, the CSED does not order a change in withholding.)

Net Available Resources	Hardship Payment (w/ Current Support)	Hardship Payment (w/out Current Support)
$0 - $71	$25 plus current	$25
$72 - $200	$25 plus current	35%
$201 - $400	25% plus current	40%
$401 - $600	40% plus current	45%
$601 or more	50% plus current	50%

Minimum Debt Payment, Multiple Cases. The monthly debt payment determined by the CSED's hardship adjustment formula is subject to a minimum of $25. If the CSED is withholding income for support debt in more than one case, the hardship-adjusted amount should be divided equally among all the cases, except that the amount applicable to any one case may not be less than $25.

If another withholding case opens or an existing withholding case closes after a hardship adjustment is implemented, the CSED screens the new situation (all cases) as if no hardship adjustment were in place, and determines whether a hardship determination should be performed (see "Screening" earlier in this POLICY). If a determination is not appropriate (the obligor is now better off paying 1/24th of the support debt in each case), the CSED terminates the existing hardship adjustment(s). If a determination should be performed, the CSED proceeds as if for an original hardship request, taking into account all of the cases and any new information, and takes any withholding action indicated by the results of the determination.

Duration of Hardship. A hardship adjustment continues only as long as the hardship conditions (extraordinary medical expenses, special employment costs, or low income for household size) on which it is based exist. Duration is determined on a case-by-case basis, however CSED policy limits the duration of any hardship adjustment to no longer than one year. The obligor may apply for (or the CSED may grant on its own motion) an extension of an existing hardship no earlier than one month before the expiration date; the criteria for extension are the same as for an original hardship adjustment.

Requirement for Supplemental Remedies; Statute of Limitations Waiver. Because a hardship adjustment lowers the percentage of the support debt the CSED can expect to collect through income withholding in the near future (and in some cases decreases the possibility of ever collecting the full amount), the CSED must pursue debt reduction through other enforcement remedies wherever possible (see PROCEDURES). Supplemental remedies are especially important in cases where the hardship adjustment results in a major loss in collection potential.

The CSED also requires the obligor to waive any statute of limitations defenses he or she may have with respect to the total support debt. The waiver, which is contained in the Financial Hardship Affidavit, preserves the CSED's future opportunities to pursue all possible enforcement remedies.

PROCEDURES

Caseworker

1. Upon receiving an acceptable oral or written request for a hardship review (see Screening and Criteria in POLICY) from the obligor or on the obligor's behalf, prepares and sends by regular mail form CS-510.5A, Hardship Request Cover Letter, and form CS-510.5E, Financial Hardship Affidavit. Does not delay any income withholding actions already in progress for full amounts. Upon request, provides blank copy of form CS-510.5B, Hardship Adjustment Worksheet, to any interested person.

   NOTE: Multiple Cases. Forms prepared in this and succeeding steps will list case numbers for all of the obligor's enforcement cases. If there are cases listed where withholding for support debt does not apply, the caseworker must remove that information from the form before printing.

2. Upon return of the completed Financial Hardship Affidavit checks for notarization. If the affidavit is notarized, proceeds to step 3. If the affidavit is not notarized, proceeds in step 2a or 2b below.

   a. If no adjustment is currently in place, contacts the obligor and explains a hardship determination cannot be performed until the affidavit is notarized. Proceeds to step 3 when the required notarization is obtained.

   b. If an adjustment is currently in place (the obligor is timely requesting a renewal), does not delay the determination process, but contacts the obligor for the required notarization and, concurrently, proceeds to step 3. If the obligor does not obtain the notarization within a reasonable time and a renewal has been granted, terminates the adjustment at that time.

3. Upon return of the Financial Hardship Affidavit (notarized as required in step 2) and any supporting documents, identifies the number of "household members," and determines the amounts to be used in the formula (see POLICY). Performs a hardship determination on system, adjusting the calculation as necessary for items such as tax amounts, self-employment income, etc. Generates form CS-510.5B, Hardship Adjustment Worksheet, and retains for the case file. Enters a SEARCHS case note describing the basis for the amounts entered.

   a. If obligor is eligible for hardship adjustment, determines duration of adjustment. Sets total withholding for support debt at the adjusted amount, or $25 times the number of cases where withholding for support debt applies, whichever is greater. Proceeds to step 4.

   b. If obligor is not eligible for hardship adjustment, proceeds to step 4.

4. Upon completing review, takes action as follows:

   a. Prepares and sends by regular mail form CS-510.5C, Hardship Adjustment Review, notifying obligor of results of review and, if applicable, listing duration of adjustment and total adjusted withholding for support debt.

   b. If hardship adjustment is granted, prepares and serves on employer, according to procedures in section CS 510.3, form FED-IW, Order to Withhold Income for Child Support, listing adjusted amount. Also prepares and sends to obligee form CS-510.8B, CP Action Letter, for adjusted amount. (Does not issue a withholding order or notify the obligee if the adjustment is a renewal of the amount already in place.) Enters hardship expiration date on SEARCHS, setting tickler for 30 days before expiration; if appropriate to obligor's situation, also sets tickler for earlier date to check for change in circumstances. Proceeds to steps 7 and 8.

   c. If at any point in these PROCEDURES the obligor requests a copy of the Hardship Adjustment Worksheet, provides a copy of the worksheet prepared in step 3 or, if applicable, step 6.

5. If at any time after being notified of the results the obligor requests further review in writing, takes action as follows:

   a. Promptly forwards the following documents to the CSED Employer Relations Specialist (ERS) for a determination:

- the obligor's returned request for further review,
- the completed Hardship Adjustment Worksheet,
- the completed Financial Hardship Affidavit, and
- any supporting documents.

EXCEPTION: If the hardship adjustment determined in step 3 is for the minimum amount, explains to obligor that Administrative Rules of Montana do not allow a lower amount, and takes no further action.

b. Monitors for the results of the ERS determination; if the determination is different from the caseworker's, issues an Order to Withhold Income for Child Support, and a CP Action Letter, listing the ERS-determined amount; sets new expiration date if necessary. If the ERS determination is the same as the caseworker's, takes no further action.

Employer Relations Specialist

6. Promptly upon receipt of the necessary materials from the caseworker (within three working days, wherever possible), reviews the hardship determination and reaches a final decision. Notifies the obligor in writing of the results of the decision, listing the amount and duration of any hardship granted; sends a copy to the caseworker. Enters SEARCHS event; includes text describing basis for decision.

Caseworker

7. For any hardship granted or (especially) renewed in step 4 or step 8a, evaluates the effect of the decreased withholding on the total debt collection. If the hardship creates a significant shortfall, investigates other avenues of debt reduction and pursues as appropriate. Possible actions may include identification of and execution on additional assets and receivables; seek-work motions; license suspension; and lump-sum settlements.

8. At least 30 days before an existing hardship adjustment expires, reviews the case for evidence of continued hardship.

   a. If clear evidence of continued hardship exists and the adjustment amount is still appropriate, sends a letter advising the obligor that the hardship adjustment is being renewed and giving the new expiration date. Enters case note with basis for renewal. Resets expiration date on SEARCHS.

   b. If clear evidence of continued hardship does not exist (or a different adjustment amount may be appropriate), prepares and sends to obligor form CS-510.5D, Hardship Expiration Letter, together with a Financial Hardship Affidavit.

      i. If the obligor returns the completed Financial Hardship Affidavit and required supporting documents before the existing hardship expires, follows

PROCEDURES in this section for hardship determination beginning at step 2. (REMINDER: If the hardship is renewed at the same amount, and a new withholding order is not needed, it will be necessary to reset the expiration date on SEARCHS.)

ii. If the obligor does not return the necessary documents before the existing hardship expires, issues an Order to Withhold Income for Child Support, and a CP Action Letter, containing the noticed support debt amount; the noticed amount is effective the day after the hardship expiration date.

ENFORCING A SUPPORT ORDER
Reviewing Health Insurance Orders

CS 520.3

SUPERSEDES

CS 520.3, Reviewing Health Insurance Orders, January 12, 2004

REFERENCES

42 USC §§ 652(f) and 666(a)(19); 45 CFR §§ 303.31 and 303.32; MCA §§ 40-5-208 and 40-5-801 et seq.

DEFINITIONS

For purposes of this section the following definitions apply:

ENFORCEMENT PARENT: The parent whose health insurance order the CSED is enforcing or preparing to enforce.

HEALTH INSURANCE ORDER: Any court or administrative order that requires a parent to provide health insurance coverage for the children. An order that requires only that the parent pay medical expenses or health care costs for the children (or even an amount toward health insurance premiums) is not a health insurance order. An order that requires a parent to provide insurance through a particular employer--whether the employer is identified by name or by some other reference--is a health insurance order only if the parent is currently employed by that employer. In questionable circumstances the caseworker should consult with regional legal staff to determine whether the language in the support order qualifies as a health insurance order.

POLICY

Requirement for Review. Federal law requires the CSED to include medical support in all child support orders being enforced under Title IV-D of the Social Security Act, and to enforce medical support whenever health insurance is available at a reasonable cost. Montana law also requires establishment and enforcement of medical support orders that include health insurance obligations.

To comply with these laws the CSED routinely (1) reviews support orders for health insurance obligations and (2) reviews cases with health insurance obligations for proper enforcement. Review occurs whenever a IV-D case is opened or re-opened, a support order is established or modified, a change occurs in the case that could affect medical support, or a pre-specified medical review date occurs.

Health Insurance Coverage and Medical Support. Generally, health insurance coverage is the vehicle by which the CSED enforces medical support. While other provisions relating to medical services for the children may be included in the support order, it is the health insurance provision that is the subject of the review described above, and the basis for medical support enforcement of the case in sections CS 520.5 through 520.10. If the support order contains a health insurance provision, the CSED refers to the provision as a "health insurance order."

Enforcement Against the Parent Obligee. In cases where both the obligor and the parent obligee are ordered to provide health insurance, the CSED may enforce the health insurance obligation of either parent. Factors that may be applied in identifying the appropriate enforcement parent include whether either parent is providing current coverage; whether either parent received credit for health insurance premiums in the guidelines calculation accompanying the support order; whether either parent is employed, and has insurance available through employment at a reasonable cost; and the percentage of each parent's gross income that would be taken up by the cost of reasonable insurance. Other factors apply in cases where some of the children live with a third-party obligee.

When the enforcement parent is identified, the CSED takes action against that parent to obtain employer insurance or, if applicable, non-employer (private) insurance. If all remedies fail, the CSED turns to the other parent and again pursues coverage through all available remedies. If reasonable health insurance cannot be obtained through either parent, the CSED monitors the case for any change that could affect medical support enforcement. If a change occurs, the CSED applies the above-listed factors at that time and identifies the proper enforcement parent according to the new case facts.

Support Orders with Specified Medical Support Amounts. Infrequently a child support order includes a specified monthly amount for medical support in addition to the child support amount. The CSED enforces the medical support amount in the same manner and at the same time as child support, but separate medical and child support accounts are required. The existence of the medical support dollar obligation may or may not relieve the CSED of the need to establish a health insurance order in the case. In these situations the caseworker should consult the regional legal unit for a determination based on the specific facts and language of the support order.

Cases without Financial Support Orders. If no financial support order or obligation exists, the CSED cannot establish a medical support order independently. Medical support can be established only in conjunction with financial establishment or support order modification. Procedures for establishing a financial and medical support order in one action are given in section CS 403.1, Notice and Order Concerning Support.

Medicaid Reimbursement. Most support orders entered by the CSED on or after October 1, 1996, and before October 1, 1999, as well as some non-CSED orders entered during that time, contain a requirement for the obligated parents to pay a "Medicaid reimbursement" amount to the state when the children are receiving Medicaid services and certain conditions apply. The CSED enforced this requirement for applicable cases until October 1, 2000, when collection of Medicaid reimbursement accounts was discontinued by CSED policy.

Non-Cooperation in Medicaid-Only Cases. In non-TANF Medicaid-only cases where he CSED has cited the obligee for non-cooperation, the IV-A agency may remove the obligee from Medicaid eligibility while continuing Medicaid benefits to the child. In these situations the case becomes a non-public assistance case, and the CSED may pursue closure on that basis (see section CS 201.5, criterion b(11)), despite the Medicaid status of the child.

PROCEDURES
Caseworker

1. **Conditions for Medical Review.** In a case where the CSED is required to enforce medical support and any of the events in (1) through (4) below occurs, reviews the case in steps 2 through 8 to determine whether a modification or enforcement action is required, and to identify the parent whose health insurance order should be enforced.

   (1) The case is opened or re-opened, or current child support is established or modified
   (2) A new-hire alert is received for the obligor
   (3) The medical review date arrives
   (4) Before the medical review date arrives a medical-related change occurs. Examples may include changes in
      - the enforcement parent's employment;
      - the enforcement parent's income;
      - the enforcement parent's premium costs;
      - the child's geographic access to covered services;
      - the availability of employer/payor dependent coverage; or
      - the status of any alternative coverage provided by the enforcement parent.

   When the review and any required action are completed, sets a new medical review date on the SEARCHS MEC screen, and monitors for any change. The review date for medical support enforcement is generally one year from the current date, unless there is a case-specific reason for an earlier review.

PROCEDURAL NOTE: Steps 2 and 4 below apply for the purpose of determining the CSED enforcement parent only. Once enforcement against the identified parent begins, the steps cannot be reapplied except as indicated in step 6, or in sections CS 520.5, 520.7, or 520.10.

2. **Identifying Case Requirements.** If a previous review has already determined the enforcement parent in the case, skips to step 6 for that parent. Otherwise, identifies the participants, support orders, and known coverages in the case and proceeds as directed in 2a through 2c below.

   EXCEPTION FOR TRANSITION CASES: In cases where the CSED is engaged in an enforcement action against the obligor that was initiated before the date of this writing, proceeds in step 6 for the obligor as the enforcement parent.

   a. **No order for obligee.** In a case where there is no parent obligee who is ordered to provide health insurance, proceeds against the obligor in section CS 520.7, Enforcing Health Insurance Orders, unless modification in step 3 is required.

      EXCEPTION: In a case involving an obligee parent where neither parent is ordered to provide insurance but the obligee parent maintains voluntary coverage, proceeds to step 7 to process the coverage or, at the caseworker's option, seeks a voluntary request for modification from the obligee.

NOTE: Child in Two Cases. If a child is in two cases--one against each parent--and both parents are required to provide health insurance, the CSED enforces against both obligors. Each obligor is the enforcement parent in his or her case.

b. **Order for parent obligee--no other obligees in case.** In a case where there is a parent obligee who is ordered to provide health insurance, and no enforcement children are attached to any third-party obligee, and
   - the obligor is also ordered to provide insurance, proceeds to step 4 to determine the appropriate enforcement parent.
   - the obligor is not ordered to provide insurance, proceeds against the parent obligee in section CS 520.7, Enforcing Health Insurance Orders, unless modification in step 3 is required.

c. **Order for parent obligee--multiple obligees in case.** In a case where there is a parent obligee who is ordered to provide health insurance, and some or all of the enforcement children are living with a third-party obligee, proceeds to enforce support according to the Third Party Rules listed in Table 1, unless modification in step 3 is required. Begins enforcement at section CS 520.7, Enforcing Health Insurance Orders.

NOTE: Third-Party Rules Prevail. For a case described in this substep (2c) the CSED applies the Third Party Rules rather than the procedures in step 4 to determine the enforcement parent.

3. **Identifying and Fulfilling Modification Requirements.** Consults Table 2 for any requirement for modification for health insurance in the case. If a modification of the support order is required, proceeds in steps 3a through 3e below.

a. If Montana has continuing exclusive jurisdiction over the support order, proceeds to step 3c below.

b. If **another** state has continuing exclusive jurisdiction over the support order, proceeds in step 7 for any voluntary coverage and takes no further action in this section until the appropriate tribunal modifies the support order to include health insurance. (Note that it is the responsibility of the state that has continuing exclusive jurisdiction to ensure that the order contains a provision for the health care coverage of the children.)

c. If a CSED modification is required in step 3a, sends the obligee a modification packet along with a written notification that
   - modification of the support order is required for the purpose of establishing medical support;

- the obligee must complete and return the enclosed form CS-408.3A, Request for Review; and
- if the obligee does not return the Request for Review, the CSED may take appropriate action against the obligee's public assistance benefits, or may proceed to close the obligee's non-public assistance case.

The written notification required above may be in the form of the standard 10-day letter (form CS-202.1A); custom language added to the Request for Review (form CS-408.3A); or any other letter, insert, or document convenient to the caseworker.

NOTE: Obligor Applicant. If the obligor was the applicant for CSED services in the case, actions in steps 3c and 3d should be addressed to the obligor.

d. Monitors for return of the completed Request for Review as in section CS 408.3.

i. If the obligee does not timely return the Request for Review, initiates case closure or non-cooperation procedures, and takes no further action in this section.

ii. If the obligee timely returns the Request for Review, completes the modification process according to the procedures in section CS 408.3. Upon entry of the modification order or decision not to modify, proceeds as in step 3e.

e. Upon completion of the modification action in step 3d proceeds below according to the outcome. (EXCEPTION: If a parent obligee is ordered to provide health insurance, and some or all of the enforcement children are living with a third-party obligee, proceeds according to the Third Party Rules in Table 1.)

i. If both parents in the case are now ordered to provide health insurance, proceeds to step 4 to identify the enforcement parent.
ii. If only one parent is ordered to provide insurance, proceeds to section CS 520.7, Enforcing Health Insurance Orders, for that parent.
iii. If neither parent is ordered to provide insurance, proceeds in step 7 for any voluntary coverage, and takes no further action in this section.

4. **Identifying the Enforcement Parent.** In cases where both the obligor and the parent obligee are ordered to provide health insurance for the children, and a choice between parents is still available after steps 2 and 3 are applied, identifies the enforcement parent according to Table 3, Enforcement Parent Decision Matrix. Takes action as necessary to obtain any information required for a decision within the table. Proceeds to section CS 520.7, Enforcing Health Insurance Orders, for the parent chosen.

EXCEPTION: If a new-hire report is received before an enforcement parent can be identified, and the CSED has previously issued and resolved an enrollment notice to the obligor in favor of enrollment, proceeds immediately to step 6 for the obligor as the enforcement parent; issues an Order to Enroll and proceeds as directed in section CS 520.7.

5. **Request for redirection--medical enforcement agreement.** Upon receiving a request from a parent for a change in the CSED enforcement parent, proceeds in steps 5a through 5d below; documents the determination and any subsequent changes on SEARCHS.

   a. Reviews the case to determine whether all of the following conditions apply; in questionable cases consults with the CSED regional legal staff:

      (1) Both parents are ordered to provide health insurance for the children.
      (2) The CSED is currently enforcing or preparing to enforce against one of the parents through an OTE.
      (3) The parents submit a written agreement to the CSED clearly stating which parent should provide health insurance coverage, and the agreement is signed by the named parent.
      (4) Enforceable coverage (via OTE) is currently available to the parent named in the agreement, or alternative coverage attributable to that parent is currently in place.

   b. If all of the conditions in 5a are met, grants the request based on a medical enforcement agreement. Terminates any enforcement against the "old" enforcement parent, and begins enforcement against the "new" enforcement parent in section CS 520.7, Enforcing Health Insurance Orders. Re-verifies coverage whenever the case is reviewed for medical support in this section. (The parents may not apply to change the enforcement parent again, once the agreement is in place.)

   c. If any of the conditions in 5a is not met, denies the request and continues enforcement against the existing enforcement parent.

   d. If coverage lapses after the agreement is in place, and the CSED cannot obtain replacement coverage from the enforcement parent by any available remedy, initiates enforcement against the other parent. (Note that a lapse in coverage that is not rectified has the effect of automatically canceling the agreement.)

6. **Reviewing Medical Support Enforcement.** Determines the status of medical support enforcement with respect to the CSED enforcement parent, and proceeds as applicable for that parent in steps 6a through 6d.

   a. **No coverage or no enforcement.** If no coverage is known, or if coverage is in place on a voluntary basis only, proceeds in 6a(i) through 6a(iv) below.

i. Determines whether all appropriate enforcement actions have been taken in section 520.7 and, if necessary, sections 520.5 and 520.10. If further action is available, proceeds as directed. Actions may include
   - issuing and resolving an enrollment notice;
   - determining whether employer insurance is reasonable in cost;
   - issuing and obtaining coverage under an Order to Enroll;
   - where employer insurance is not available, determining whether private insurance is reasonable in cost; and,
   - for reasonable private insurance, obtaining coverage or proceeding with a medical penalty.

ii. Determines whether any previous barriers to employer coverage still exist; proceeds in 6a(i) if there has been a change.

iii. Reviews any existing medical hardship (employer or private) as in section CS 520.5 and proceeds as directed.

iv. Prepares and sends to the parent form CS-520.3B, Confirmation of Health Insurance Status, to identify or confirm coverage and employment. Monitors for a response within 10 working days and proceeds to step 6c.

OPTION FOR INFORMAL CONTACT: In lieu of written confirmation the caseworker may obtain coverage and employment information by contacting the enforcement parent by telephone. The caseworker must obtain or confirm information in **all** the fields listed on the form.

b. **Enforcement with coverage.** If coverage has been obtained as a result of a CSED enforcement action, confirms the coverage is still in place in 6b(i) or 6b(ii) below. If it is not, proceeds in step 6a above.

i. For employer insurance, contacts the employer or sends the confirmation letter as in 6a(iv) above.

ii. For private insurance, contacts the insurance provider or sends the confirmation letter as in 6a(iv) above.

c. **Response to confirmation letter.** If the parent timely responds to the confirmation letter in step 6a with the required information re: coverage and employment (and Indian Health Service eligibility if applicable), verifies any new coverage listed on the response, updates SEARCHS and notifies the parent obligee as applicable (see procedures for processing coverage information in section CS 520.7). Proceeds in 6a(i) as applicable for any new information received.

If the parent does not timely respond, contacts the parent or, if applicable, the employer or insurance provider for the information. If information cannot be obtained from any source, and the information is necessary to proceed against the parent (for example, if employment or unemployment cannot be determined), proceeds to section CS 520.10 to initiate a medical penalty.

d. **Enforcement remedies exhausted.** If all possible remedies for obtaining health insurance are exhausted for the enforcement parent, proceeds in 6d(i) through 6d(iii) below as applicable.

  i. If there is no other parent in the case, or if the other parent is not ordered to provide health insurance, monitors for a change in circumstances and takes no further action in this section. (Note that modification requirements in step 3 may still apply.)

  ii. If there are two parents with health insurance orders in the case, and third party rules do not apply, proceeds as follows:

    A. If the CSED has not pursued enforcement against the other parent since the determination in step 4, proceeds to enforce against that parent, beginning in step 6a.

    B. If the CSED has pursued enforcement against the other parent since the determination in step 4, and has exhausted all available remedies, monitors for a change in case facts that may affect the CSED's ability to enforce health insurance. If a change occurs, returns to step 4; otherwise, takes no further action in this section.

  iii. If there are two parents with health insurance orders in the case, and third party rules apply, proceeds against the other parent to the extent allowed in Table 1.

7. **Other Party Providing Coverage.** Determines from information available in the case file whether any person or entity other than the enforcement parent (for example, the other parent, the other parent's spouse, or an unordered parent) is providing geographically accessible health insurance coverage for the children. If so, processes the enrollment information according to applicable procedures in section CS 520.7. For any coverage that may be unknown to the custodian of the covered child, notifies the custodian of the coverage in writing.

   Proceeds in this step regardless of whether the enforcement parent is providing health insurance, and regardless of whether either parent is ordered to provide health insurance.

   NOTE: Importance of Other Coverage Information. The information described above may or may not be needed to proceed with health insurance enforcement in the case; however, it is important for determining the percentage of children covered, and other aggregate data maintained by the CSED and the federal government. It is strongly suggested that, in cases where the other parent is also ordered to provide health insurance coverage, the caseworker contact that parent to identify possible coverage if none is listed in the case file.

8. **Medical Support Dollar Amount.** Regardless of whether the obligor provides or has been ordered to provide health insurance, if the support order specifies a sum-certain medical support amount payable by the obligor, sets up an "assigned" or "unassigned" medical support account in the case.

Table 1. Third-Party Rules

This table applies in cases where there is more than one obligee, and one of the obligees is a parent who is ordered to provide health insurance for the children.

RULE 1	**Attached children only.** The CSED does not enforce against a parent obligee for children who are not living with the parent obligee.
RULE 2	**No mixed enforcement.** The CSED does not enforce against two parents in the same case at the same time, except in temporary situations in RULE 3.
RULE 3	**All children vs some children--existing coverage.** The CSED will enforce existing coverage provided by the parent obligee (subject to RULE 1) only - while pursuing coverage through the obligor for all the children, or - if enforcement through the obligor for all the children fails, or - if the obligor is not ordered to provide health insurance.
RULE 4	**All children vs some children--no existing coverage.** If there is no existing coverage provided by the parent obligee, the CSED will enforce first against the obligor; if that enforcement fails, or if the obligor is not ordered to provide health insurance, the CSED will enforce against the parent obligee for the children living with the parent obligee.
RULE 5	**10-day wait for disenrollment.** If the children with the third-party obligee will be removed from an existing OTE as a result of the application of RULE 1, the CSED notifies the third-party obligee and waits 10 days (for the third-party obligee to open a case against the parent obligee) before removing the children from the existing OTE.
RULE 6	**Correct case number on OTE.** If the third-party custodian opens a case against the parent obligee, the CSED follows regular procedures to establish a financial obligation against that parent. As soon as the support order is entered the CSED will issue a new OTE to the parent's employer under the new case number. (While the financial obligation is being established the CSED can continue to enforce the parent's medical obligation under the existing OTE.)

Table 2. Federal Modification and Enforcement Requirements (Health Insurance)

	Case Facts			Requirements		
	Parent Who is **Ordered** to Provide Health Insurance	Parent Who **Carries** Health Insurance	Parent Who is **Able** to Provide Health Ins	CSED Required to Modify Order?	CSED Required to Enforce Insurance?	Reference
			(CP is a parent:)			
1	NCP	CP	n/a	*(either:)* yes/CP	*(or:)* yes/NCP	PIQ,[1] Q#20
2	NCP	NCP	n/a	no	yes/NCP	USC[2]
3	NCP	neither	n/a	no	yes/NCP	USC
4	CP	neither	CP is able (NCP n/a)	no	yes/CP	PIQ, Q#21
5	CP	neither	CP is not able (NCP n/a)	yes/NCP[3]	(yes/NCP after mod)	PIQ, Q#21
6	neither	CP	n/a	no	no (voluntary only)	PIQ, Q#22
7	neither	NCP	n/a	yes/NCP	(yes/NCP after mod)	USC
8	neither	neither	n/a	yes/NCP	(yes/NCP after mod)	USC
9	both	n/a	n/a	no	yes/NCP[4]	USC
10	CP	CP	n/a	no	yes/CP	PIQ, Q#21
11	CP	NCP	n/a	*(either:)* yes/NCP	*(or:)* yes/CP	USC; PIQ, Q#21
			(CP is not a parent:)			
12	NCP ordered	n/a	n/a	no	yes/NCP	USC
13	NCP not ordered	n/a	n/a	yes/NCP	(yes/NCP after mod)	USC

[1] Policy Interpretation Question PIQ-02-03, Medical Support Enforcement Policy Clarifications, issued December 20, 2002, by the federal Office of Child Support Enforcement.

[2] Medical support enforcement provisions of Title IV-D of the Social Security Act, at 42 USC § 652(f).

[3] Other CSED policies concerning establishment or enforcement in temporarily unworkable cases may also apply.

[4] In the situation where both parents in the case are ordered to provide insurance, the CSED Enforcement Parent Decision Matrix applies.

Table 3. Enforcement Parent Decision Matrix

See last page for further instructions.

Step	Question and Outcomes	Action
1	**Is coverage currently in place for the children?** *(Coverage must be attributable to the parent, must be geographically accessible, and must be in place now or scheduled by the plan administrator to take effect within 6 months from now upon completion of a waiting period.)*	
	custodial parent: YES non-custodial parent: YES	go to step 2
	custodial parent: NO non-custodial parent: YES	enforce NCP
	custodial parent: YES non-custodial parent: NO	enforce CP
	custodial parent: NO non-custodial parent: NO	go to step 2
2	**Is there credit for insurance in the current G/Ls?** *(Credit must be verifiable on a copy of the child support guidelines that accommpanies the support order; for a "reverter" support order where the child support amount depends on whether the NCP is providing health insurance, the CSED considers there is no credit in the guildelines.)*	
	custodial parent: YES non-custodial parent: YES	go to step 3
	custodial parent: NO non-custodial parent: YES	enforce NCP
	custodial parent: YES non-custodial parent: NO	enforce CP
	custodial parent: NO non-custodial parent: NO	go to step 3
3	**Is the parent currently employed?** *(Employment status is determined by the caseworker using information available on SEARCHS and in the case file.)*	
	custodial parent: YES non-custodial parent: YES	go to step 3a
	custodial parent: NO non-custodial parent: YES	enforce NCP
	custodial parent: YES non-custodial parent: NO	enforce CP
	custodial parent: NO non-custodial parent: NO	enforce CP

3a	**Is insurance available through the employer?** *(Insurance is available if the employer offers dependent coverage to some or all of its employees, and the parent is eligible for the coverage.)*	
	custodial parent: YES non-custodial parent: YES	go to step 3b
	custodial parent: NO non-custodial parent: YES	enforce NCP
	custodial parent: YES non-custodial parent: NO	enforce CP
	custodial parent: NO non-custodial parent: NO	go to step 5

3b	**Is the parent's out-of-pocket cost $0?** *(The parent's out-of-pocket cost is $0 if the employer pays the entire premium required for coverage of the children.)*	
	custodial parent: YES non-custodial parent: YES	enforce CP or both
	custodial parent: NO non-custodial parent: YES	enforce NCP
	custodial parent: YES non-custodial parent: NO	enforce CP
	custodial parent: NO non-custodial parent: NO	go to step 3c

3c	**Is the parent's out-of-pocket cost reasonable?** *(The parent's monthly out-of-pocket cost is the total cost not paid by the employer; if the parent must be enrolled to get coverage for the children, the cost includes the cost of the parent's coverage. The out-of-pocket cost is reasonable if it does not exceed 5% of the parent's gross monthly income.)*	
	custodial parent: YES non-custodial parent: YES	go to step 4
	custodial parent: NO non-custodial parent: YES	enforce NCP
	custodial parent: YES non-custodial parent: NO	enforce CP
	custodial parent: NO non-custodial parent: NO	**STOP--begin again at step 1 when triggering event occurs**

4	**For which parent is the cost of employer insurance a smaller percentage of gross income?** *(Use this test only if employer insurance is available and reasonable to both parents.)*	
	a. CP monthly out-of-pocket cost: b. CP monthly gross income: c. CP percentage (line a divided by line b):	
	d. NCP monthly out-of-pocket cost: e. NCP monthly gross income: f. NCP percentage (line d divided by line e):	
	g. Custodial parent's percentage (line c) is smaller	enforce CP
	h. Non-custodial parent's percentage (line f) is smaller	enforce NCP

5	**For which parent is the cost of private insurance a smaller percentage of gross income?** *(Use this test only if both parents are employed, and employer insurance is not available to either parent.)*	
	a. CP monthly out-of-pocket cost: b. CP monthly gross income: c. CP percentage (line a divided by line b):	
	d. NCP monthly out-of-pocket cost: e. NCP monthly gross income: f. NCP percentage (line d divided by line e):	
	g. Custodial parent's percentage (line c) is smaller	enforce CP
	h. Non-custodial parent's percentage (line f) is smaller	enforce NCP

FURTHER INSTRUCTIONS: When an enforcement parent is identified by this process, leave the process and enforce against that parent (employer and private) until coverage is obtained or enforcement fails. If enforcement fails, enforce against the other parent until coverage is obtained or enforcement fails. If enforcement fails against both parents, return to this process when a triggering event occurs, and begin again at step 1.

ENFORCING A SUPPORT ORDER
Medical Hardship Review

CS 520.5

SUPERSEDES

CS 520.5, Medical Support Enforcement--Medical Hardship Review, July 29, 2003.

REFERENCES

MCA §§ 40-5-208 and 40-5-801 through 40-5-825; ARM 37.62.1909.

DEFINITIONS

For purposes of this section the following definitions apply:

AFFECTED OBLIGEE: An obligee who is the custodian of one or more enforcement children in the case, and who is not the enforcement parent.

EMPLOYED FOR OTE: An enforcement parent who, according to CSED information, is paid by an entity other than himself or herself, or whose business is registered with the Montana Secretary of State as a DBA (Doing Business As) or a corporation.

EMPLOYER HARDSHIP/EMPLOYER INSURANCE: A hardship determination in this section performed with respect to insurance available to the enforcement parent through his or her employment.

ENFORCEMENT PARENT: The parent whose health insurance order the CSED is enforcing or preparing to enforce.

GROSS INCOME: All cash earned or received by the enforcement parent except means-tested benefits, payments for reimbursement of expenses, and child support payments. Gross income does not include income of other household members. In the case of self-employment, gross income means gross revenue less reasonable and necessary business expenses.

OUT-OF-POCKET PREMIUM COST: The amount per month the enforcement parent must pay from his or her own funds for dependent coverage. If the plan requires that the parent be enrolled to purchase coverage for the children, then the premium cost includes the cost of the parent's coverage as well. Amounts contributed by the employer or other group are not included in the out-of-pocket cost.

PRIVATE HARDSHIP/PRIVATE INSURANCE: A hardship determination in this section performed with respect to insurance available outside of the enforcement parent's employment. The insurance may be individual insurance or insurance available through a non-employer group, such as a union, church, or civic group.

SELF-EMPLOYED: An enforcement parent who is receiving income but who does not meet the definition of a parent "employed for OTE" above. The CSED makes this determination via review of electronic sources and the case file.

UNEMPLOYED: An enforcement parent for whom the CSED is unable to locate income after (1) checking electronic sources and the case file, (2) contacting the parent directly or receiving a direct statement from the parent, and (3) contacting the other parent, or the third-party custodian if applicable. Benefits paid to the parent are not considered income. If efforts in (1) and (3) reveal no income but the CSED is unable to contact the enforcement parent, it may be assumed the parent is unemployed.

POLICY

Purpose of Medical Hardship Review. The purpose of a medical hardship review is to determine whether health insurance is available to the enforcement parent at a reasonable cost. If it is determined insurance is not available to the parent at a reasonable cost, the

CSED grants a medical hardship and does not enforce the health insurance obligation for that parent. The use of these review procedures may avert the need for a hearing in many cases.

Cases Available for Hardship Determination. The CSED reviews a case for either employer hardship or private hardship depending on the case situation. A review for a private hardship applies only if there is no employer insurance available to the enforcement parent **and** the support order includes a requirement for private insurance. Any support order that contains a health insurance requirement that is not limited to employer insurance is considered to include private insurance.

Some support orders require health insurance regardless of whether it is available at a reasonable cost. In these cases CSED policy nevertheless requires application of the reasonable cost test (hardship determination) when the conditions under "Applicability" below are met.

Applicability. The CSED proceeds in this section when any of the following conditions apply:

(1) There is no medical hardship currently in place for the type of insurance being enforced (employer or private) and the enforcement parent alleges the insurance is too expensive. ***See PROCEDURES, steps 1 and 4.***

(2) There is no medical hardship currently in place for employer insurance and the CSED deems the enforcement parent's allegation in (1) above under the procedures in section CS 520.7. (In cases where a hardship has already been denied, the CSED may deem the request only if there has been a change in circumstances.) ***See PROCEDURES, step 1.***

(3) The employer notifies the CSED that the enforcement parent's insurance costs exceed 5% of gross income. ***See PROCEDURES, step 2.***

(4) The employer notifies the CSED that insurance is not available to the enforcement parent. ***See PROCEDURES, steps 2 and 3.***

(5) A medical hardship is currently in place and the hardship is about to expire according to the expiration date. ***See PROCEDURES, steps 5 and 7.***

(6) A medical hardship is currently in place and there has been a change in case facts that could result in termination of the hardship based on a new hardship calculation. ***See PROCEDURES, steps 5, 6, and 7.***

NOTE: Changes Affecting Hardship. Changes that may be considered in (6) above include, the obligor has changed or terminated employment, the obligor's gross income has increased, or the obligor's portion of the insurance premium has decreased.

Reasonable Cost. In determining whether insurance is available at a reasonable cost the CSED applies the following formula (see DEFINITIONS for out-of-pocket premium and gross income):

Out-of-Pocket Premium $\leq$ (Gross Income) x 0.05

If the parent's monthly out-of-pocket premium cost for coverage of the children is less than or equal to 5% of the parent's gross income, the insurance is reasonable in cost.

Medical Hardship Determination by Montana Employer. When the CSED is enforcing the health insurance obligation of a parent employed in Montana, the initial medical hardship review for employer insurance is conducted by the employer. The Order to Enroll issued in section CS 520.7 requires the employer to determine, using the CSED's formula (see above), whether the dependent health insurance available to the enforcement parent is reasonable in cost. In unusual cases the CSED may override a "not reasonable" determination made by the employer, if it is aware of additional income not included in the employer's calculation. Upon request, the CSED may also review and, if applicable, override the employer's initial determination that insurance is reasonable if time has passed since the OTE was issued and there has been a change in gross income or out-of-pocket premium. (In the case of a non-Montana employer, the CSED gathers the information on gross income and out-of-pocket premium cost, and performs the initial and subsequent reviews itself.) See also Employer Determination for Multiple Cases later in this POLICY.

Medical Hardship Determination for Children in the Same Case. In determining a medical hardship in a case the CSED considers all the enforcement children in the case together. If the premium for all the children is not reasonable, the hardship is granted. This policy applies in all cases, including cases where enforcement for a subsequent child or new subcase is initiated after a medical hardship is denied for the original children.

Medical Hardship Determination for Children in Multiple Cases. In situations where a parent is the enforcement parent in more than one case, the medical hardship calculation is performed as follows:

FIRST: Determine whether the parent's total out-of-pocket cost of health insurance premiums for all of the cases is reasonable. If the cost is reasonable, deny the hardship for all cases; STOP. If the cost is not reasonable, continue.

SECOND: Identify the premium costs for each case, then group the costs as follows: (1) the cost for the case with the oldest medical support order; (2) the combined cost for the case with the oldest medical support order plus the case with the next oldest medical support order; (3) the combined cost for the cases with the oldest, next oldest, and next oldest medical support orders; etc.

NEXT: Determine reasonableness beginning with group (1). If the cost for group (1) is reasonable, deny the hardship for that group and move on to group (2); if the cost for group (1) is not reasonable, grant the hardship for all groups; STOP.

NEXT: If the cost for group (2) is reasonable, deny the hardship for that group and move on to group (3); if the cost for group (2) is not reasonable, grant the hardship for the case with the latest support order in group (2), and for all succeeding groups; STOP.

REPEAT: Continue the above process for group (3) and all succeeding groups.

For each group in the above process the CSED uses the least expensive premium available for the number of children in that group (even if that means different plans are used in calculations for different groups). Also, the above process applies regardless of whether any of the children are currently covered.

The following examples illustrate the hardship determination process for multiple cases.

EXAMPLE 1:
5% of parent's gross income = $100 per month.
Case A: 1 child, older order
Case B: 1 child
Lowest available monthly premiums:
1 child = $80
2 children = $140
Determinations:
Total premium for both cases ($140) exceeds 5% ($100).
Group 1 premium (case A only, $80) does not exceed 5%.
Group 2 premium (cases A and B, $140) exceeds 5%.
> Deny hardship for case A; grant hardship for case B.

EXAMPLE 2:
5% of parent's gross income = $150 per month.
Case A: 1 child, oldest order
Case B: 1 child, next oldest order
Case C: 2 children
Lowest available monthly premiums:
1 child = $80
2 children = $140
3 children = $220
4 children = $220
Determinations:
Total premium for all cases ($220) exceeds 5% ($150).
Group 1 premium (case A only, $80) does not exceed 5%.
Group 2 premium (cases A and B, $140) does not exceed 5%.
Group 3 premium (cases A,B,C, $220) exceeds 5%.
> Deny hardship for case A; deny hardship for case B;

grant hardship for case C.
(Note that in most situations the cost for 3 children will be the same as the cost for 2 children; in this example the children in case C live out of state so a different plan applies.)

Employer Determination for Multiple Cases. In some cases a Montana employer may contact the CSED for guidance on how to apply the reasonable cost (5%) test when the enforcement parent has multiple cases. Or, the enforcement parent may contact the CSED claiming the total premium cost for multiple cases exceeds 5% of gross income, but the Montana employer has enrolled all of the children. In either situation the caseworker may assist the employer with the determination using the principles stated in the above paragraphs and examples.

Cost-Beneficial Determinations Not Included. The hardship review process does **not** include a determination of whether the insurance available to the enforcement parent is cost-beneficial when combined with insurance available to, or already obtained by, the other parent. If a medical support order includes a cost-benefit condition for requiring insurance participation by both parents, the cost-benefit determination can be made only by a CSED Administrative Law Judge at an administrative hearing on medical support issues.

PROCEDURES

SEARCHS NOTE

The following PROCEDURES contain instructions to "update SEARCHS" for a hardship granted or a hardship denied. The specific method for updating SEARCHS depends on whether the hardship field on the SEARCHS MEC screen is still correct. If it is, the user must enter a case note confirming the status. If it is not, the user must update the field (which automatically enters a case note for the new status).

Caseworker

1. **Hardship determination for employer insurance.** Upon receiving a request from an enforcement parent for a medical hardship review of insurance available or in place through the parent's employer, enters a SEARCHS case note for the request received. Unless the option in NOTE 1 applies, proceeds in 1a through 1d below, as applicable, and sets the next review date on the SEARCHS MEC screen when action is completed.

   Note that processing in this step does not extend the time frames for enforcement of employer insurance given in section CS 520.7, Enforcing Health Insurance Orders.

   NOTE 1: Option for Montana Employer Insurance. ***[In cases where the OTE is already in place, the option described here applies only if the OTE contains the necessary language. The language was added to the standard OTE in January 2004; for OTEs issued around this time the caseworker should check the actual copy of the order before proceeding.]*** If the health insurance is provided by a

Montana employer, the OTE will instruct the employer not to enroll the children if the enforcement parent's out-of-pocket portion of the premium required for coverage exceeds 5% of the parent's gross income. Since this is the same calculation as that performed in step 1b below, the CSED may elect to decline a request for a medical hardship review in this case and rely on the employer's determination. To apply this option the caseworker must contact the requesting parent and explain the employer is the determiner of the medical hardship in this situation. If the OTE results in enrollment (or if it has already resulted in enrollment), that means the employer has determined that the parent's out-of-pocket premium is less than or equal to 5% of the parent's gross income. The CSED will review the employer's determination at the request of the enforcement parent only if the parent presents some evidence that the calculation was not correctly performed, or that the amounts used in the calculation have changed since the employer applied the formula.

NOTE 2: Deemed Request for Review. For insurance available through the enforcement parent's employer, the CSED may deem the parent's request in this step under the procedures in section CS 520.3 or 520.7

a. **Hardship Letter.** Prepares and sends to the enforcement parent form CS-520.6A, Letter Concerning Medical Hardship (Hardship Letter), acknowledging the parent's request for a hardship review and instructing the parent to submit the necessary financial information within 10 days. If the information is timely received, proceeds to step 1b. If the information is not timely received, proceeds with enforcement of the employer insurance, and monitors coverage as in step 8. If financial information or another request is received at some later date, begins again with this step.

   NOTE: Financial Information Previously Obtained. This step (1a) may be omitted if the necessary financial information is contained in the case file, and there is reason to believe the information is still current.

b. **Hardship determination.** Upon receipt of the necessary financial information completes form CS-520.5C, Medical Hardship Calculation. See DEFINITIONS for guidance in determining gross income and out-of-pocket premium costs. If the hardship is granted, proceeds to step 1c. If the hardship is denied, proceeds to step 1d.

c. **Employer hardship granted.** If the hardship is granted, updates SEARCHS for the employer hardship granted, and proceeds in 1c(i) through 1c(v) below; then proceeds to step 5 to monitor the employer hardship, and takes no further action in this section.

   i. **Effective date.** If the employer insurance is currently in place sets the hardship effective date at 10 days after the date of the determination, and sets a tickler for the effective date. If no employer insurance is currently in place (the CSED has not yet issued the OTE or has not yet received the Plan

Administrator's response stating the children are enrolled), sets the effective date at the date of the determination.

   ii. **Expiration date.** Sets the hardship expiration date at one year after the effective date, unless an earlier date is indicated by the enforcement parent's financial or employment situation or other case facts.

   iii. **Notifying the obligee.** Prepares and sends by regular mail to each affected obligee form CS-510.8B, CP Action Letter, informing the obligee that the CSED has granted a medical hardship, and giving the effective date.

   iv. **Notifying the enforcement parent.** Concurrently with step 1c(i) above, prepares and sends to the enforcement parent form CS-520.6A, Letter Concerning Medical Hardship (Hardship Letter), informing the parent the hardship is granted and giving the effective and expiration dates.

   v. **Terminating the OTE.** Upon the occurrence of the effective date terminates any Order to Enroll that is currently in place, as in section CS 520.8.

d. **Employer Hardship Denied.** If the hardship is denied, updates SEARCHS for the employer hardship denied. Prepares and sends a Hardship Letter to the enforcement parent informing the parent the hardship is denied. Proceeds with enforcement of the employer insurance; if an OTE has not yet been issued, adjusts the OTE cover letter to the employer to remove the 5% limitation. Monitors coverage as in step 8 and takes no further action in this section.

2. **Hardship determination by Montana employer.** Upon issuing an Order to Enroll (OTE) to a Montana employer, monitors for response as described in section CS 520.7, and takes additional action relating to medical hardship below.

   In cases where the OTE is issued without the 5% limitation (because the language was not yet standard when the OTE was issued, or because the caseworker removed the language before issuance based on a determination that premiums did not exceed 5%), skips this step (2) and proceeds in the remaining steps as applicable.

   a. **Employer determines insurance reasonable.** If the plan administrator responds that the children are enrolled, presumes the employer has applied the test for reasonable cost according to CSED instructions and has determined that premiums do not exceed 5% of the enforcement parent's gross income. Processes the insurance coverage as in section CS 520.7. Proceeds to step 8 to monitor the coverage, and takes no further action in this section unless a request for a medical hardship is received or the situation changes.

   b. **Employer determines insurance not reasonable.** If the employer responds that withholding for medical support would exceed 5% of the enforcement parent's gross income, updates SEARCHS for the employer hardship granted.

Prepares and sends by regular mail to each affected obligee form CS-510.8B, CP Action Letter, informing the obligee that employer/payor insurance is not available because it is not reasonable in cost. Monitors the employer hardship as described in step 5 and takes no further action in this section.

NOTE: Overriding an Employer-Granted Hardship. If the caseworker is aware of significant additional income received outside of employment, he or she may redetermine the hardship using the updated gross income. If the redetermination results in the hardship being denied, the caseworker should issue a new OTE to the Montana employer, adjusting the cover letter to remove the requirement for the 5% test. Procedures at step 1d (employer hardship denied) for notifying the enforcement parent, updating SEARCHS, and setting the next review date also apply.

c. **Employer insurance not available.** If the employer or plan administrator responds that dependent insurance is not available to the parent, or that dependent insurance will not be available for a period of at least six months, proceeds to step 3.

3. **Determining private insurance requirement.** In a case where insurance is not available to the enforcement parent through employment, or the parent is unemployed or self-employed (see DEFINITIONS, this section), checks the support order for a requirement that includes non-employer insurance.

   a. If no requirement for private insurance is found, sets the next medical review date on the SEARCHS MEC screen and monitors for availability of enforceable health insurance.

   b. If a requirement including non-employer insurance is found, checks SEARCHS and the case file for financial information on the enforcement parent.

      i. If sufficient information is available to determine the enforcement parent's gross income, and the information is current (see NOTE below), proceeds to step 4.

      NOTE: Currency of Information. For purposes of this section current information is information that applied to the enforcement parent's financial circumstances (specifically income and deductions) within the last 12 months, or within the previous calendar year.

      ii. If current and sufficient financial information is not available, enters a SEARCHS case note stating information for determining gross income is not available. Sets the next medical review date on the SEARCHS MEC screen and monitors for availability of adequate financial information. Returns to this section and proceeds in this step (3) when information becomes available. Also monitors for availability of employer insurance as in section CS 520.3.

4. **Hardship determination for private insurance.** Proceeds in this step whenever (1) the CSED receives a request for a private-insurance hardship from the enforcement parent, or (2) a review of an existing private-insurance hardship is required by step 8, or (3) the conditions in step 3 for pursuing private insurance are satisfied.

   Identifies dependent health insurance plans available to the parent outside employment (These include individual plans as well as any plans offered through a union or other group to which the parent belongs, if known.) Proceeds in steps 4a through 4d below for the plan with the lowest out-of-pocket monthly premium.

   a. **Hardship requested by parent OR existing hardship expiring.** Upon receiving a private hardship request or identifying a reason to review an existing private hardship, prepares and sends to the enforcement parent form CS-520.6A, Letter Concerning Hardship (Hardship Letter), directing the parent to submit financial information within 10 days; selects the language most applicable to the parent's awareness of the private hardship process up to this point.

      i. If the parent timely responds and submits sufficient financial information as requested, performs a hardship determination using form CS-520.5C, Medical Hardship Calculation, and proceeds in step 4c or 4d as applicable.

      ii. If the parent timely responds and provides proof of coverage or the name of a new employer, proceeds to section CS 520.7 to process the coverage or to enforce insurance through the new employer; returns to this section only as directed.

      iii. If the parent does not timely respond in substep 4a(i) or 4a(ii) above, proceeds to section CS 520.10, Enforcing Health Insurance Orders--Penalty Actions.

   b. **File review--employer insurance unavailable.** Upon determining in step 3 that a private hardship determination is required, performs the determination using form CS-520.5C, Medical Hardship Calculation and the available financial information.

      i. If the non-employer plan is not reasonable in cost, proceeds to step 4d.

      ii. If the non-employer plan is reasonable in cost, and the determination was based on information recently provided by the enforcement parent, proceeds to step 4c.

      iii. If the non-employer plan is reasonable in cost, but the determination was based on information not recently provided by the enforcement parent, prepares and sends to the enforcement parent form CS-520.6A, Letter Concerning Hardship (Hardship Letter) directing the parent to submit financial information within 10 days; selects the option explaining why a determination concerning private insurance is required. Proceeds as applicable for the response as in steps 4a(i) through 4a(iii).

c. **Private hardship denied.** Prepares and sends to the enforcement parent form CS-520.6A, Letter Concerning Medical Hardship (Hardship Letter), selecting the option for the private hardship denied; selects a response date by which the parent must submit proof that coverage has been obtained, and monitors for response.

    i. If coverage is not obtained, updates SEARCHS for the hardship denied, and proceeds to section CS 520.10, Enforcing Health Insurance Orders--Penalty Actions.

    ii. If coverage is obtained, processes the coverage as in section CS 520.7, sets the next medical review date on SEARCHS, and proceeds to monitor the private insurance in step 8.

d. **Private hardship granted.** Proceeds to update SEARCHS and notify parents and custodians as in steps 4d(i) through 4d(v) below. Monitors the private hardship in step 8, and takes no further action in this section.

    i. If the private insurance is currently in place, sets the effective date for the hardship at 10 days after the date of the determination. Otherwise, sets the effective date at the date of the determination.

    ii. Sets the expiration date at one year after the effective date, unless an earlier date is indicated by the enforcement parent's financial or employment situation or other case facts.

    iii. Updates SEARCHS for the private hardship granted.

    iv. Prepares and sends to each affected obligee form CS-510.8B, CP Action Letter, informing the obligee that the CSED has granted a medical hardship, and giving the effective date.

    v. If the enforcement parent is aware the CSED is reviewing the case for private-insurance hardship, prepares and sends to the enforcement parent form CS-520.6A, Letter Concerning Medical Hardship (Hardship Letter), informing the parent the private hardship is granted.

5. **Monitoring the employer hardship.** Proceeds in this step upon
    - being alerted the employer hardship is about to expire (a SEARCHS tickler will appear 11 months from the date the hardship is entered),
    - becoming aware of a change of circumstances that may affect the hardship determination, or

- identifying a new employer for the enforcement parent. (EXCEPTION: If the CSED receives a new-hire alert for the enforcement parent it must issue the OTE to the employer unless a new hardship determination can be performed within two working days.)

a. **No change in employer.** If the parent has not changed employers, contacts the employer to verify gross income and out-of-pocket premium cost. Contact may be by telephone or form CS-520.5B, Payor's Statement. Performs a hardship determination using form CS-520.5C, Medical Hardship Calculation.
  - If insurance is reasonable (the hardship no longer applies), proceeds to step 5b.
  - If insurance is not reasonable (the hardship still applies), proceeds to step 5d.

b. **Parent's financial information.** If the calculation in step 5a indicates the hardship no longer applies, prepares and sends to the parent form CS-520.5F, OTE Warning Letter, informing the parent the CSED will order enrollment.

  i. If the parent timely responds and claims insurance is not reasonable, obtains the parent's financial information (via form CS-520.6A, or through any other method or resource). Performs a hardship determination using form CS-520.5C, and takes action as in step 1c or 1d according to the results.

  ii. If the parent does not timely respond, or does not submit adequate financial information if requested in step 5b(i), considers the hardship revoked, updates SEARCHS for the hardship denied, and proceeds in step 1d as applicable.

c. **Change in employer.** If the parent has changed employers, terminates the existing hardship and proceeds in section CS 520.7, Enforcing Health Insurance Orders, to issue an OTE to the new employer. (EXCEPTION: At the caseworker's discretion, **within two working days** of identifying the new employer performs a hardship determination using the new premium cost and gross income. If the hardship is granted, proceeds in step 5d below.)

d. **Hardship renewed.** If the calculation in step 5a indicates the hardship still applies, updates SEARCHS for the hardship granted, and notifies each affected obligee as in step 1c. Sets the next medical review date on SEARCHS, and continues to monitor the employer hardship.

6. **Monitoring the private hardship--possibility of employer insurance.** Proceeds in this step upon
   - becoming aware of a change in the availability of employer insurance (same employer), or
   - identifying a new employer for the enforcement parent. (EXCEPTION: If the CSED receives a new-hire alert for the enforcement parent, it must issue the OTE to the employer unless an employer hardship determination in step 1 is indicated and can be completed within two working days.)

When a new employer or a change in availability of insurance with the known employer is discovered, proceeds to section CS 520.7 to enforce insurance through the employer. Returns to this section if employer insurance is found to be unavailable, and begins again at step 3.

7. **Monitoring the private hardship--hardship expiring.** Proceeds in this step upon
   - being alerted the private hardship is about to expire (a SEARCHS tickler will appear 11 months from the date the hardship is entered), or
   - becoming aware of a change of circumstances that may affect the private hardship determination.

   Upon identifying a change of circumstances or the approaching expiration of the private hardship, checks the case file and electronic sources for sufficient and current information to determine the enforcement parent's gross income (see step 3b for definition of current information).

   If necessary identifies dependent health insurance plans available to the parent outside employment as in step 4, and proceeds in steps 7a and 7b below for the plan with the lowest out-of-pocket monthly premium.

   a. **File review.** If sufficient and current information is found, performs a hardship determination using form CS-520.5C, Medical Hardship Calculation.

      i. If the private insurance is not reasonable in cost, proceeds as in step 4d.
      ii. If the private insurance is reasonable in cost, proceeds as in step 7b.

   b. **Parent's financial information.** If sufficient and current information is not found (or the file review in step 7a showed private insurance was reasonable in cost), prepares and sends to the enforcement parent form CS-520.6A, Letter Concerning Medical Hardship (Hardship Letter), directing the parent to submit financial information within 10 days; selects the language most applicable to the parent's awareness of the private hardship process up to this point.

      i. If the parent timely responds and provides sufficient financial information, performs a determination using form CS-520.5C, Medical Hardship Calculation, and proceeds in step 4c or 4d according to the results.

      ii. If the parent timely responds and provides proof of coverage or the name of a new employer, proceeds to section CS 520.7 to process the coverage or to enforce insurance through the new employer; returns to this section only as directed.

      iii. If the parent does not timely respond in step 7b(i) or 7b(ii) above, proceeds to section CS 520.10, Enforcing Health Insurance Orders--Penalty Actions.

8. **Monitoring the insurance coverage.** Upon occurrence of the medical review date, or upon becoming aware of a possible lapse in coverage, verifies the existing coverage by contacting the employer or the insurance company, as applicable. (Also follows procedures in section CS 520.3 for confirming health insurance status directly with the enforcement parent.)

   a. If the coverage is still in place, enters a SEARCHS case note for the coverage re-verified, and updates the next review date on the SEARCHS MEC screen.

   b. If the employer coverage has lapsed, follows procedures in section CS 520.7 for enforcing compliance of the employer. If the employer insurance has become unavailable to the parent, follows procedures in this section beginning at step 3.

   c. If the private coverage has lapsed, prepares and sends to the enforcement parent form CS-520.6A, Letter Concerning Medical Hardship (Hardship Letter), directing the parent to submit financial information or proof of other coverage within 10 days; selects the option explaining why a determination concerning private insurance is required.

      i. If the parent responds appropriately, updates SEARCHS and proceeds according to the applicable response. Specifically, if the parent responds by
         - obtaining coverage, proceeds to monitor coverage in this step (8).
         - proving insurance is not reasonable, proceeds as in step 4 to grant the private hardship.
         - identifying a new employer that offers dependent health insurance), proceeds to section CS 520.7 to enforce the employer insurance.

      ii. If the parent does not respond appropriately, proceeds to section CS 520.20, Enforcing Health Insurance Orders--Penalty Actions.

SUPERSEDES

CS 520.7, Enforcing Health Insurance Orders, July 29, 2003.

REFERENCES

42 USC § 666(a)(19); 45 CFR §§ 303.31 and 303.32; MCA §§ 40-5-208 and 40-5-801 through 40-5-825.

POLICY

Scope of Enforcement. The CSED is responsible for enforcing medical support in all IV-D cases where a health insurance order is in effect against a parent. In cases where both parents are ordered to provide health insurance the CSED identifies the appropriate parent for medical enforcement--the "enforcement parent"--according to the procedures in section CS 520.3, Reviewing Health Insurance Orders. The CSED is also responsible for enforcing medical support dollar amounts specified in child support orders, but these amounts are treated as child support for enforcement purposes, and the procedures in this section do not apply.

Support orders entered under the Montana Medical Support Reform Act generally contain not only health insurance provisions but also certain other "medical support" provisions relating to sharing or reimbursement of medical expenses or access to coverage between parents. The CSED does not at this time enforce these additional provisions except in rare occasions, and only in Medicaid cases. Either party may, however, seek a judgment for any costs or penalties associated with these provisions in district court.

Enforcement Action--Standard Procedure. The CSED enforces health insurance orders by ordering the employer/payor and the plan administrator to enroll the children in a plan available to the parent's dependents. The CSED initiates the enforcement action by serving on or obtaining from the enforcement parent one of the following three notices:

(1) Notice of immediate enrollment. This notice is contained in the Notice and Order Concerning Support (NOCS) issued by the CSED during the establishment process, and in the Modification Notice and Order (MONO) issued during a modification action. It tells the parent the CSED intends to order enrollment immediately upon entry of the support or modification order. Immediate enrollment may be contested by requesting a hearing on the NOCS or MONO within the time allowed for response to the notice. ***(Note that immediate enrollment is available only if the NOCS or MONO actually contains the necessary language. Generally, NOCS and MONO documents issued before January 2002 did not contain immediate enrollment language, and documents issued between January 2002 and November 2003 contained immediate enrollment language for the obligor only.)***

(2) Notice of Intent to Enroll. This notice is used when the support order does not contain a provision for immediate enrollment. It tells the enforcement parent the CSED intends to order enrollment if the parent does not request a hearing within 10 days.

(3) Voluntary Enrollment Authorization. This authorization, when signed by the enforcement parent, allows the CSED to issue an Order to Enroll to the parent's employer. The parent gives up his or her right to be served with, or to request a hearing on, the Notice of Intent to Enroll. Once entered, the authorization may not later be withdrawn.

In the case of the notices in (1) and (2) above, if the parent does not request a hearing or obtain a medical hardship (section CS 520.5) or other special determination within the prescribed time, the CSED issues an Order to Enroll (OTE) as soon as an employer/payor is located. If the employer/payor does not offer health insurance for which the parent's dependents would qualify, it so informs the CSED, and the CSED takes no further action in this section until the status changes. If the employer/payor does offer health insurance the plan administrator must enroll the children, and the employer/payor must withhold the premiums from the parent's income.

If the total withholding for child support (current support plus arrears) and health insurance would exceed the limits of the federal Consumer Credit Protection Act (CCPA), the employer/payor may not withhold the premiums, and enrollment cannot proceed. The employer/payor must inform the CSED if the CCPA limit prevents withholding; in cases where the enforcement parent is the obligor, the CSED may adjust arrears withholding if applicable to allow for the health insurance premiums.

The plan administrator may not disenroll the children unless (1) the CSED orders disenrollment, (2) the parent proves that he or she is providing comparable coverage outside employment, or (3) the employer stops withholding premiums to avoid exceeding the CCPA limit.

Enforcement Action--Penalty Procedure. In cases where the enforcement parent is not employed, or the parent is employed but insurance is not available through employment, the CSED may be aware of other insurance that is available to the parent at a reasonable cost through a non-employer/payor group, or through an individual policy. In these cases the CSED cannot order enrollment, because the group or insurer is not a payor of income to the parent, and would not be able to withhold the required premiums. Instead, the CSED enforces the insurance requirement through a medical penalty (see procedures in section CS 520.10) or a contempt action.

Enforcement Action--Proceeding Against the Other Parent. In cases where both parents are ordered to provide health insurance and the CSED has exhausted the available remedies against one parent (employer insurance, then private insurance), the enforcement target then shifts to the other parent. The CSED applies the same health insurance remedies against the new enforcement parent as against the first enforcement parent. When available remedies against both parents are exhausted, medical support enforcement in the case ceases. Enforcement resumes when circumstances change and employer or private insurance becomes available to either parent.

Medical Care Defined. To be enforceable under this section health insurance must provide medical care or benefits for a child as defined by MCA 40-5-804(7), which states,

"Medical care means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of affecting any structure or function of the body."

Under Montana law an insurance plan that provides any of the services listed above is sufficient to satisfy the enforcement parent's requirement for health insurance.

PROCEDURES

Caseworker

1. **Initiating Enforcement.** Upon identifying an enforcement parent in section CS 520.3 in a case where medical support enforcement action is required,
   - proceeds to step 2 for each child for whom a Notice of Intent to Enroll (NIE) to the enforcement parent is required (see NOTE 1 below).
   - proceeds to step 3 for each child for whom the support order contains a provision for immediate enrollment against the enforcement parent (see NOTE 3 below).

   Note that all active-status children in the case are considered, regardless of obligee, unless enforcement is restricted in section CS 520.3.

   NOTE 1: Requirement for NIE. An NIE is required for each child for whom immediate enrollment does not apply. A signed and notarized Voluntary Enrollment Authorization (VEA) for the child may be used in place of the NIE. If the CSED has previously issued and resolved an NIE but no further action was taken because the caseworker determined that enrollment was not appropriate at that time (see steps 4h, 4i, 4j--coverage was too expensive, not geographically accessible, or already provided outside employment), the CSED does not issue another NIE when the situation changes. Instead, the caseworker issues a 10-day warning letter (see step 7), then proceeds to enrollment if applicable.

   NOTE 2: Obsolete Enrollment Notices. Until July 2001 the CSED used a Notice of Intent to Enroll and Assess Health Insurance Penalty (NOIEH) to enforce medical support. The NOIEH promised that the CSED would not order the employer/payor to enroll the child as long as the obligor obtained and maintained voluntary enrollment. This notice is now obsolete; it does not fulfill the requirement for the NIE in these procedures.

   NOTE 3: Immediate Enrollment Language. Immediate enrollment is included in the support order if the order contains the following language or its equivalent with respect to the enforcement parent:

> "When dependent health insurance is available through the [enforcement parent]'s employer or payor, immediate enrollment applies upon entry of this support order, and the CSED may order the employer or payor and the plan administrator to withhold premiums and enroll the children (and the [enforcement parent] if necessary) in a health plan available to the [enforcement parent]'s dependents."

TERMINOLOGY NOTE 1: In the remainder of these PROCEDURES, unless otherwise specified, the term **"parent"** means the enforcement parent identified in section CS 520.3.

TERMINOLOGY NOTE 2: In the remainder of these PROCEDURES the term **"obligee"** means the obligee who is not the subject of this enforcement.

2. **Preparing and Serving the Enrollment Notice.** Proceeds in step 2a or 2b below as applicable.

   a. **Notice of Intent to Enroll.** Unless the exception in step 2b applies, prepares form CS-520.7A, Notice of Intent to Enroll (NIE)(this form is generated via the SEARCHS NID screen). Includes in the notice all the children identified in step 1 (the document will automatically include the current SEARCHS obligee for each child).

      Secures service of the NIE on the parent by certified mail/restricted delivery, personal service, or acknowledgment. For service by acknowledgment includes in the package the original NIE and one copy, along with a self-addressed stamped envelope.

      Enters the date and method of service on the SEARCHS NID screen, and retains the written proof of service in the case file. Monitors for the parent's response within 10 working days from the date of service; proceeds to step 4, 5, or 6 as applicable. In the case of service by acknowledgment, if a signed acknowledgment is not returned within 20 calendar days after the mailing date, immediately arranges for service by sheriff or private process server.

      If service of the NIE fails, enters a SEARCHS case note for the failure; reattempts service of the original document as applicable, and enters a SEARCHS case note for each attempt.

      NOTE: Use of NIE Not Related to Current Enrollment or Hardship. The CSED issues the NIE for any child identified in step 1 where the CSED has jurisdiction in the case, regardless of whether
      - the parent has voluntarily enrolled the child in insurance coverage; or
      - the CSED has granted a medical hardship for the current employer/payor coverage; or
      - the child is eligible for services from the Indian Health Service; or
      - the CSED has already ordered the current employer/payor to enroll the child based on a pre-July 2001 notice.

b. **EXCEPTION: Voluntary authorization.** If the parent agrees to enrollment of the child and is willing to give up the right to notice and opportunity for hearing on the enrollment action, prepares and sends to the parent form CS-520.7C, Voluntary Enrollment Authorization (VEA), and monitors for return within 10 calendar days after the date mailed.

   i. If the parent contacts the CSED with questions concerning the intent to order enrollment, explains or takes action in step 4 as applicable, adapting the instructions as necessary for the voluntary authorization. Upon resolution of any issues proceeds as in step 2b(ii).

   ii. If the parent does not contact the CSED with questions concerning the intent to order enrollment, and
      - the parent timely returns the signed and notarized authorization, completes the NID screen as if for immediate enrollment, using the date signed by the parent as the resolved date, and proceeds to step 9.
      - the parent does not timely return the authorization, returns to step 2a to issue the NIE.

   NOTE: Role of VEA. Once signed by the parent, a Voluntary Enrollment Authorization has the same effect as an NIE resolved in favor of enrollment. The VEA cannot be withdrawn if the parent later disagrees with a CSED enrollment action for the children covered by the authorization.

3. **Immediate Enrollment Authority.** If the support order contains a notice of immediate enrollment against the parent, enters a SEARCHS case note for the immediate enrollment authority and completes the NID screen for the immediate enrollment notice.

   If the parent responds to entry of the support order by contacting the CSED and questioning the intent to order enrollment, explains or takes action in step 4 as applicable, adapting the instructions as necessary for the immediate enrollment notice instead of the NIE.

   Upon resolution of any issues in step 4, or if the parent does not respond to the support order on the subject of enrollment, proceeds directly to step 9.

4. **Discussions with Parent.** If the parent responds to the NIE by contacting the CSED and questioning the intent to order enrollment, explains or takes action as applicable in 4a through 4j below:

   a. **Notice incorrect.** If the parent proves that the NIE is incorrect, either amends or dismisses the notice as applicable.

   To amend the notice--issues an amended NIE from the SEARCHS NID screen, and begins again at step 2.

To dismiss the notice--issues form CS-401.3F, Motion and Order to Dismiss Administrative Notice, and enters the date dismissed on the SEARCHS NID screen.

b. **Voluntary enrollment.** If the parent objects that the child is already voluntarily enrolled in employer/payor coverage, explains the CSED must order enrollment anyway, to comply with federal regulations, and this is not a punitive action. If the enrollment was previously unknown to the CSED, updates the SEARCHS medical screens for the insurance coverage. Also notifies any affected obligee of the coverage as in step 14b.

c. **Existing order.** If the parent objects that the CSED has already ordered the employer/payor to enroll the child, explains the order will remain in place; the NIE has been issued to advise the parent of the actions the CSED will take should the parent's employment change. (This situation may occur for "transition" cases in which the NIE is replacing a previous CSED notice issued before July 2001.)

d. **No insurance.** If the parent objects that the employer/payor does not provide dependent health insurance for which the parent is eligible, explains as in 4d(i) or 4d(ii) below:

   i. If the caseworker has verified that the employer/payor does not currently provide dependent health insurance for **any** employees (see NOTE 4 under item (4) in step 9), explains the CSED will not issue the order as long as that situation applies.

   ii. If the caseworker has not verified insurance availability, or is aware the employer/payor does provide insurance to some or all employees, explains there is a provision in the order that allows the employer/payor to respond that insurance is not available; however, the order and response are required for CSED records.

e. **Waiting period.** If the parent objects that employer/payor coverage is not currently available because of a waiting period, explains the CSED is required to order enrollment now; the employer/payor and plan administrator must arrange for enrollment as soon as the waiting period expires.

   NOTE: Delay for Open Enrollment Not Allowed. The waiting period referred to above is not the same as the time remaining before the next "open enrollment" period. Montana law at MCA 40-5-812(3) does not allow the plan administrator to delay ordered enrollment for that purpose. Part B of the enrollment order issued in step 10 advises the plan administrator that, "All enrollments are to be made without regard to open season restrictions."

f. **Existing hardship.** If the parent objects that the CSED has already granted a medical hardship for the current situation, explains the hardship will be honored as long as the situation remains the same; the NIE has been issued to advise the parent of the options available when the hardship expires. (This situation may occur for "transition" cases in which the NIE is replacing a previous CSED notice to the obligor issued before July 2001.)

g. **Other parent providing coverage.** If the parent objects that the other parent already provides health insurance coverage for the child, investigates to determine whether the other parent's insurance is valid. If so, and if the other parent is ordered to provide health insurance in the case, considers whether it would be appropriate under the procedures of section CS 520.3 to initiate enforcement against the other parent. If changing the enforcement parent is not appropriate, proceeds against the noticed parent in this step; explains to the parent he or she may request a hearing and, if the support order allows, obtain a ruling on whether the combination of the two plans would be cost beneficial.

If the enforcement parent is not re-designated and the other parent's coverage is verified, enters the insurance information on SEARCHS and informs the CSED Administrative Support Unit as in step 14.

h. **Insurance too expensive.** If the parent objects that the employer/payor coverage is too expensive, explains the CSED will review the case for a medical hardship, and informs the parent of the possible outcomes as described in the NOTE following substep 4j. Proceeds to section CS 520.5, Medical Hardship Review, to determine the hardship. Also proceeds to step 5 or 6 in this section if applicable.

i. **Not geographically accessible.** If the parent objects that the employer/payor coverage is not geographically accessible to the child, explains the CSED will review the case to determine accessibility, and informs the parent of the possible outcomes as described in the NOTE following substep 4j. Investigates accessibility according to the definition at the end of this substep (4i), and proceeds as follows:

i. If there is no employer/payor plan option that satisfies the definition, updates the SEARCHS MEC screen and proceeds to section CS 520.5 to determine the private insurance requirement. Takes no further action in this section unless accessibility changes. If there is a change in accessibility in favor of enrollment, updates the SEARCHS MEC screen and proceeds to step 7.

ii. If employer/payor coverage is accessble, enters a SEARCHS case note for geographically inaccessible denied, and proceeds to step 9.

DEFINITION: For purposes of this section "geographically accessible" means some or all covered medical services are available within one hour's drive of the child's residence. EXCEPTION: If no medical services are available at all (regardless of coverage) within one hour's drive, but the nearest medical services that are available would be covered, then the plan is considered geographically accessible. (For example, the nearest hospital is 2 hours away, and services provided by that hospital would be covered under the plan.) In questionable cases or extenuating circumstances the caseworker should consult the supervisor or staff attorney to determine accessibility.

j. **Alternative coverage.** If the parent objects that he or she already provides health insurance coverage for the child outside employment (alternative coverage), explains the CSED will review the case to determine whether the alternative coverage is acceptable; informs the parent of the possible outcomes as described in the NOTE following substep 4j.

Investigates the alternative coverage. The parent is considered to "provide alternative coverage" if (1) and (2) below apply:

(1) The parent, the parent's current spouse, the parent's relative (who is not an obligee in the case), or a member of the parent's household actually carries the coverage; or, the child is eligible for services from the Indian Health Service (IHS) or some other non-public assistance plan or program that does not require a premium, based on facts about the parent or child, **and the services are geographically accessible to the children**.

(2) The coverage includes medical care or benefits for the child as defined in POLICY, Medical Care Defined. Note that according to this definition alternative coverage may be satisfied by a plan that provides emergency services only.

If alternative coverage is provided by the parent, takes action in step 14 (non-IHS coverage only), and monitors for a change in supporting facts. If the facts change in favor of enrollment, proceeds to step 7; otherwise takes no further action in this section.

If alternative coverage is not provided by the parent, enters a SEARCHS case note for alternative coverage denied and proceeds to step 9.

NOTE: Substeps 4H,4I,4J--Caseworker Determinations. In cases where the parent requests a determination by the caseworker on the subject of medical hardship, geographic accessibility, or alternative coverage, the caseworker should make clear that the time for requesting a hearing on the NIE is not extended. If the determination is in the parent's favor (the caseworker finds that the cost of insurance is not reasonable, the coverage is not accessible, or alternative coverage is in place), the CSED will not order enrollment unless the situation changes. However, if the determination is against the parent and the parent has not timely requested a hearing on the NIE, the hearing opportunity is lost and the CSED will order enrollment without further notice.

5. **Time Up on NIE.** If the parent does not timely respond to the NIE by requesting a hearing, enters the resolved date and result on the SEARCHS NID screen. If the parent has not initiated a caseworker determination in step 4h, 4i, or 4j (coverage too expensive, not geographically accessible, or already provided outside employment) that has resulted in non-enrollment, proceeds to step 9.

6. **Request for Hearing.** Upon being informed in step 8a that the parent has timely requested a hearing on the NIE--either initially or as a result of a contact in step 4--takes action in steps 6a through 6d below.

   a. Contacts the parent and attempts to resolve the problem informally by explaining or taking action as in step 4. Note that this step includes determining any claim made by the parent re: medical hardship, geographic accessibility, or alternative coverage.

      i. If resolution is successful (the parent is satisfied with the results of the discussion and with any caseworker determination on the issues, and no longer wants a hearing), asks the parent to withdraw his or her request in writing. Takes action as applicable to
         - amend or dismiss the notice (step 4a);
         - enter existing coverage on SEARCHS (steps 4b and 4g);
         - notify the obligee of coverage (step 4b);
         - process and monitor the non-enrollment (step 4h, 4i, or 4j--coverage too expensive, not geographically accessible, or already provided outside employment); or
         - proceed with enforcement (step 9).

      ii. If resolution is not possible (for example, the parent disagrees with the caseworker's determination that insurance is reasonable in cost), proceeds to step 6b.

   b. Reviews the required elements of the case with the parent, and identifies any elements the parent intends to contest at hearing. Issues that may be contested are
      - whether the parent is the person named in the NIE,
      - whether the parent has been served with the NIE,
      - whether the CSED has authority to act in the matter, and has personal jurisdiction over the parent,
      - whether there is a support order in effect that requires the parent to provide health insurance for the child,
      - whether health insurance is available at a reasonable cost,

      NOTE: The CSED applies a "reasonable cost" test (if requested) when enforcing a health insurance requirement regardless of whether the support order actually specifies a reasonable cost limitation.

- whether health insurance is geographically accessible,
- whether the parent is providing alternative health insurance, or
- (if the support order allows) whether the available health insurance is cost-beneficial combined with insurance provided by the other parent. (CSED support orders entered under the Montana Medical Support Reform Act beginning in November 1996 generally contain a provision requiring both parents to provide health insurance if it is cost-beneficial to do so.)

c. Prepares testimony, arranges for witnesses, and assembles exhibits needed to present evidence on the issues in step 6b (see the NOTE below and Attachment 1 at the end of this section). Prepares a witness and exhibit list and submits the original list and exhibits to the Office of the Administrative Law Judge, with copies to the parent, by the exhibits due date.

Appears at the hearing as a witness; gives evidence as requested by the Administrative Law Judge, and enters a SEARCHS case note for the testimony presented. Monitors for a proposed decision and order and any timely motion for review under ARM 37.62.949 and 951, and enters a SEARCHS case note for the proposed decision received.

NOTE: Proving the Prima Facie Case. The evidence prepared by the caseworker must address, at a minimum, **the five elements of the CSED's prima facie case.** These elements are service of notice, authority to act, personal jurisdiction over the parent or the employer, existence of a health insurance order against the parent, and reasonable cost of insurance. The caseworker must also arrange for testimony and exhibits addressing the other issues identified in step 6b (geographic accessibility, alternative coverage, and cost- beneficial issues).

d. Upon receipt of the final decision and order, enters the associated SEARCHS case note, enters the resolved date and result on the SEARCHS NID screen, and takes action as follows according to the result of the hearing:

  i. If the final decision and order contains a determination for (in favor of) enrollment, proceeds to step 9.

  ii. If the final decision and order contains a determination against enrollment, proceeds in substep A or B below as applicable.

    A. If the determination is conditional (see step 8b), sets a tickler for any expiration date or to review for specific circumstances contained in the decision and order. Proceeds to step 7 if and when enrollment becomes appropriate.

    B. If the determination is unconditional (see step 8b), proceeds according to the basis given in the decision and order:

- If enrollment is denied because insurance is not available at a reasonable cost, monitors for a change in the parent's income or premiums for coverage. If a change occurs and insurance may be reasonable under section CS 520.5, works with the regional legal unit to move the Administrative Law Judge for a change in the decision and order, and proceeds according to instructions.
- If enrollment is denied because the CSED did not have the proper authority to issue the Notice of Intent to Enroll (for example, the parent has no health insurance obligation for one or more of the children), evaluates the case for the next appropriate action. Consults with the regional legal staff as needed and proceeds according to case requirements.

7. **OTE Warning Letter.** (In the case of a **medical hardship** coordinates the requirements of this step with those of section CS 520.5.) At any time after **either** (1) determination of a non-enrollment in step 4h, 4i, or 4j (coverage too expensive, not geographically accessible, or already provided outside employment), **or** (2) entry of a CSED decision and order containing a conditional determination against enrollment in step 8b, **and** upon becoming aware that the facts have now changed in favor of enrollment (see EXAMPLES below), proceeds in steps 7a through 7c. (EXCEPTION: In cases where the conditions in this paragraph apply and a new-hire report is received, takes no further action in this step (7) but proceeds directly to step 10 to issue an OTE to the new employer/payor.)

   EXAMPLES: The following changes in case facts may require action in this step (not an exhaustive list):
   (1) Before a caseworker-determined medical hardship expires the parent's out-of-pocket premium or gross income changes, and a new determination under CS 520.5 indicates the hardship should be terminated.
   (2) The service provider or the child has moved, or the provisions of the plan have changed, so that covered medical care is now geographically accessible.
   (3) The approved alternative coverage is no longer in place, and the parent has not obtained replacement coverage.

   a. **Issuing warning letter.** Issues form CS-520.5F, Enrollment To Be Ordered (OTE warning letter). Sends the letter to the parent by regular mail, and monitors for a response within 3 mailing days plus 10 working days after the mailing date.

      NOTE: Role of OTE Warning Letter. The warning letter states the CSED will issue an Order to Enroll unless the parent provides proof that the previous non-enrollment determination or conditional decision and order still applies. Note that in this situation the original enrollment notice is not involved; the NIE or notice of immediate enrollment was resolved earlier, and the opportunity for hearing is no longer available.

b. **Non-enrollment continued.** If the parent timely responds and shows that the non-enrollment determination or the conditional decision and order still applies, enters a SEARCHS case note for the response and monitors for a change in circumstances; takes no further action in this section.

c. **Enrollment required.** If the parent does not timely respond with information showing the non-enrollment or conditional determination should be continued, enters a SEARCHS case note for the response and proceeds to step 9.

Office of the Administrative Law Judge (OALJ)/ Administrative Law Judge (ALJ)

8. **Conduct of NIE Hearing.** Upon receiving a timely request for a hearing on an NIE issued in step 2, enters a SEARCHS case note for the request received and proceeds in steps 8a through 8c below. (Note that a request is considered timely only if it is received within 10 working days after the date of service.)

OALJ a. Sends a facsimile copy of the hearing request to the caseworker and obtains any dates the caseworker will not be available. Sets the hearing time and date and other due dates (witness and exhibit lists, exchange of exhibits, requests for discovery or subpoenas) and issues a notice of hearing and scheduling order as in ARM 37.62.919. Sends an informational copy of the notice of hearing to each affected obligee.

ALJ b. Conducts the hearing according to the requirements of ARM 37.62.941 through 945. Limits the hearing to the issues listed in step 6b. Issues a proposed decision and order, reviews and takes necessary action on any motions for review, and issues a final decision and order as in ARM 37.62.949 and 951. Enters SEARCHS case notes for the hearing held and the proposed and final decisions and orders signed.

The final order should include a determination for or against enrollment; a determination against enrollment may be conditional or unconditional. In the case of a conditional determination, the order should include a specific date, or a specific set of circumstances identifiable by the caseworker, under which the CSED may proceed to enroll the children without further legal action. A determination against enrollment--whether conditional or unconditional--should be clear that it does not limit the CSED's ability to enforce non-employer insurance where applicable.

OALJ c. Sends copies of the proposed decision and order to the parent, each affected obligee, and the caseworker. Schedules due dates or oral arguments required by the ALJ for any motions for review received; sends copies of the final decision and order to the parent, each affected obligee, and the caseworker, retaining the original for the OALJ file. Monitors for any petition for judicial review. Enters

SEARCHS case notes for the proposed and final decisions and orders mailed, and for the receipt and determination of any motion to review.

Caseworker

9. **Conditions for Enrollment Order.** Reviews the case for authority to proceed with enrollment, according to the conditions in (1) through (4) below. Immediately proceeds to step 10 for each child for whom all of the conditions apply.

(1) **Due process.** The parent has been served with notice of the CSED's intent to enroll the child, or has returned a Voluntary Enrollment Authorization, and
- the NIE has been resolved in favor of enrollment by default (step 5), OR
- a hearing on the NIE has resulted in a decision and order that currently allows enrollment (step 6), OR
- the notice of immediate enrollment has been resolved in favor of enrollment by entry of a support order containing the immediate enrollment provision, OR
- the Voluntary Enrollment Authorization has been signed and notarized.

(2) **No conflicting determination.** There is no previous determination of non-enrollment in effect for the current facts (for example, a medical hardship that was granted before the NIE was issued).

(3) **No preventing facts.** The CSED is not aware of any case facts, such as those described in step 4h, 4i, or 4j (coverage too expensive, not geographically accessible, or already provided outside employment), that would support a determination of non-enrollment. (Active investigation is not required unless the issue is raised by the parent.) Note that existing coverage through another employer/payor may be considered alternative coverage in determining this condition.

(4) **Employer identified with no enrollment order.** An employer/payor is identified with whom there is no enrollment order currently in effect for the child. (See the exceptions in NOTES 3 and 4 below.) Note that an enrollment order issued on the basis of a pre-July 2001 notice is still valid, and remains in effect until there is reason to amend or terminate the order.

NOTE 1: Proceeding for multiple employers. If more than one employer/payor is identified at the same time, the caseworker must **EITHER**
- proceed concurrently for all employers; if coverage under more than one employer/payor is obtained, identify the least expensive coverage and terminate the other coverages according to the procedures in section CS 520.8; **OR**
- proceed first for the employer/payor (if any) for which the CSED has a reasonable expectation of dependent coverage; if coverage is not obtained, proceed concurrently for the remaining employers.

If an employer/payor is identified after alternative coverage (including ordered coverage through a different employer/payor) is in place, the caseworker must re-verify the alternative coverage and, if the coverage has lapsed, proceed in step 10 **within the applicable time frames**.

NOTE 2: Federal Compliance. Once coverage is in place for a child as a result of a CSED enrollment order or voluntary enrollment outside employment, the federal requirement for enforcing health insurance is fulfilled. Coverage under more than one employer/payor, or under a different employer/payor whose plan may be considered more beneficial, is not required.

NOTE 3: Exceptions for Certain Payors. CSED policy recognizes certain payors to whom it is not necessary to send an OTE. These are the payors of (1) unemployment insurance benefits, (2) workers' compensation benefits, (3) social security/SSI benefits, and (4) prison wages.

NOTE 4: Exception for Payors Not Offering Health Insurance. According to federal guidance issued by the Office of Child Support Enforcement (OCSE) in December 2002, it is not necessary to send an enrollment order to an employer/payor that does not provide dependent health insurance for its employees. The CSED interprets this guidance strictly, and has established the following requirements for using the "no insurance" exception:

(1) The caseworker must obtain specific confirmation--in the form of a Payor Statement, a telephone call to the employer/payor, or some other retainable evidence--that the employer/payor does not provide dependent insurance.
(2 The evidence must show that the employer/payor does not provide dependent health insurance for **any** employees. If dependent insurance is available for some employees, the enrollment order must be sent; the employer/payor can respond that the particular employee is among a class of employees who are not eligible.
(3) Facts supporting a "no insurance" exception must be documented in a SEARCHS case note.
(4) Payors identified in NOTE 3 are not subject to the above requirements; CSED policy excepts these cases automatically.

NOTE 5: Employer/Payor Defined. For purposes of this section an employer/payor means **either** a business that pays income to the parent but is not owned or operated by the parent, **or** the parent's business that is registered with the Montana Secretary of State as a DBA (Doing Business As) or as a corporation.

REMINDER: Use of OTE Required. The CSED issues an enrollment order in step 10 whenever the conditions in this step (9) are met, **even if**

- the parent has voluntarily enrolled the child with the current employer/payor; or
- the child is enrolled elsewhere by the other parent (but see the discussion in step 4g); or

- the caseworker believes dependent health insurance is not available to the parent through the employer/payor (unless an exception in NOTE 3 or 4 above applies); or
- the caseworker made a determination of non-enrollment based on medical hardship or geographic inaccessibility for a previous employer; or
- the notice in condition (1) was resolved before the parent gained employment or changed employers.

10. **Order to Enroll.** Issues an Order to Enroll and notifies the participants as in steps 10a through 10d below.

    a. Proceeds to step 10b according to the time frames described in (1) through (3) below:

        (1) New-hire report. If the enforcement parent is the obligor and a new-hire report is received
        - after the enrollment notice is resolved, proceeds in 10b within two working days after the new-hire report.
        - before the enrollment notice is resolved, proceeds in 10b according to the time frames in (2) or (3) below.

        If the enforcement parent is the obligee and a new-hire report is received for the obligor, applies the time frames in (2) or (3) below for the obligee.

        (2) Immediate enrollment. If immediate enrollment is authorized by the support order and
        - a withholding order is issued as a result of the support order, proceeds in 10b concurrently with issuance of the withholding order.
        - no withholding order is issued as a result of the support order, proceeds in 10b within 15 calendar days after the support order is entered. (EXCEPTION: If a new-hire report is received before the 15 calendar days have expired, proceeds in 10b within two working days of the new-hire report.)

        (3) Notice of Intent to Enroll/Voluntary Enrollment Authorization. If the action is based on an NIE or VEA, proceeds within 15 calendar days after resolution of the notice or receipt of the signed authorization. (EXCEPTION: If a new-hire report is received before the 15 calendar days have expired, proceeds in 10b within two working days of the new-hire report.)

    b. Prepares an Order to Enroll (OTE) package comprising
    - form FED-MED, National Medical Support Notice;
    - form CS-520.7M, Order to Enroll Supplement;

      (Forms FED-MED and CS-520.7M are generated together via the SEARCHS OTD1 screen. See NOTES 1 and 2 below for contents.)

- in the case of a non-Montana employer, a copy of the support order(s) containing the requirement(s) for health insurance for the children (a copy of the guidelines calculation is not required)(see NOTE 3 below); and
- a completed Acknowledgment of Receipt of Order(s) and Waiver of Service (half-page form available in the regions in hard copy).

Generates forms FED-MED and CS-520.7M and assembles the package according to the requirements in 10b(i) through 10b(vi) below.

i. Before generating form FED-MED, if the employer has requested that the instruction pages be omitted from the National Medical Support Notice (form FED-MED), requests an update of the SEARCHS EMU screen. When EMU is updated, SEARCHS will automatically omit these pages when the FED-MED document is generated.

ii. In generating form FED-MED includes all of the children identified in step 9 (the document will automatically include the current SEARCHS obligee for each child).

iii. In cases where the employer's SEARCHS address is outside Montana but the parent's work location is in Montana, adjusts generation of the OTE Supplement to ensure the cover letters will be created.

iv. Before printing, checks the FED-MED form for any addresses that should be suppressed based on a SEARCHS domestic violence indicator; where necessary corrects the address to read "c/o the CSED." Also checks the FED-MED form to ensure the correct underlying support orders are identified on the front of the document.

v. Signs the cover letters generated for a Montana employer or a Montana work location.

vi. Signs, or if regional policy requires, obtains the approval and signature of the supervisor on, Parts A and B of the FED-MED form; retains a copy for the file. (The CSED Administrator has designated both the supervisor and the caseworker who prepared the OTE package as individuals authorized to issue the National Medical Support Notice.)

NOTE 1: Contents of OTE Supplement. The OTE Supplement includes a cover letter to the employer, a cover letter to the plan administrator, and a supplemental information sheet for the plan administrator. The cover letters inform the employer and plan administrator of their rights and additional obligations under Montana law. The supplemental sheet allows the plan administrator to provide required insurance information not listed in the Plan Administrator Response (see NOTE 2 below). When the employer's SEARCHS address is outside Montana, SEARCHS automatically omits the cover letters from the OTE Supplement.

NOTE 2: Mechanisms of FED-MED. The FED-MED document includes a Part A for the employer to keep, and a Part B for the employer to forward to the plan administrator. Each part notifies the recipient to take certain steps to effect the enrollment of the child and/or to notify the CSED of the enrollment status. The employer/payor must either respond to the CSED or forward Part B to the plan administrator within 20 working days after the date of the document. The plan administrator must respond to the CSED within 40 working days after the date of the document (in practice the CSED allows 40 working days from the date of service of the OTE package on the employer/ payor).

NOTE 3: Support Order Available to Montana Employers Upon Request. Because a copy of the support order containing the medical obligation is not enclosed in the OTE package to Montana employers, the cover letter informs the employer it has a right to receive a copy of the order upon request. If the employer does request a copy of the order, the CSED must furnish it immediately.

c. Sends the OTE package to the employer/payor by regular mail, and monitors for return of the signed Acknowledgment confirming receipt by the employer/payor. If there is reason to believe service by acknowledgment will not be effective, arranges for service of the package by certified mail, return receipt requested, or by sheriff's service, and monitors for confirmation of service.

Upon written confirmation of service, retains the proof of service in the case file, enters the date and method of service on the SEARCHS OTD screen, monitors for response, and proceeds in steps 11, 12, and 13 as applicable.

NOTE: Service on Parent's Business. If the employer/payor is owned and operated by the parent (i.e., the parent's business is registered with the Montana Secretary of State), the CSED serves the OTE package on the business. Service must be through the registered agent if the business is a corporation.

d. Informs the participants the CSED has issued the OTE, by sending the following documents by regular mail:
   (1) To the parent, a copy of the complete OTE package.
   (2) To each obligee named as a custodian in the National Medical Support Notice, form CS-510.8B, CP Action Letter, informing the obligee that enrollment for health insurance has been ordered. (CAUTION: It is not appropriate to send a copy of any part of the OTE package to the obligee.)

11. **Parent's Response to OTE.** If at any time after the OTE is issued the parent contacts the CSED to contest the enrollment, takes action as follows:

a. If the parent proves a mistake of fact (e.g., enforcement against the wrong person; no health insurance requirement), proceeds to terminate the OTE according to the procedures in section CS 520.8. In the case of enforcement against the wrong person, it may also be necessary to vacate the notice.

b. If the parent claims the insurance is too expensive or is not geographically accessible, determines the claim as in step 4h or 4i.

   i. If the determination finds that ordered enrollment is not appropriate, informs the parent and proceeds to amend or terminate the OTE as in section CS 520.8. Also proceeds in section CS 520.5 as applicable.
   ii. If the determination finds that ordered enrollment is appropriate, informs the parent and takes no further action on the contest. (If the claim was for insurance geographically inaccessible, enters a SEARCHS case note for the claim denied.)

c. If the parent claims he or she provides alternative coverage for the child, investigates the claim as in step 4j.

   i. If investigation shows the parent provides alternative coverage **and**
      - the coverage was in place at the time the CSED issued the OTE, or
      - the parent obtained the coverage before the children were (or will be) enrolled under the OTE,

      informs the parent and proceeds to amend or terminate the OTE according to the procedures in section CS 520.8. Also proceeds in step 14 as applicable.

   ii. If investigation shows the parent does not provide alternative coverage, enters a SEARCHS case note for the alternative coverage denied, informs the parent, and takes no further action on the contest.

   iii. If investigation shows the parent provides alternative coverage but coverage began after the plan administrator enrolled the children based on the OTE, documents the facts on SEARCHS and informs the parent that he or she must contact the plan administrator and show proof of "comparable coverage" for the child. Also proceeds in step 14 as applicable.

      If the plan administrator is satisfied the coverage is comparable, the plan administrator can disenroll the child without an order from the CSED. The CSED will not intercede for the parent with the plan administrator.

d. If the parent contests the enrollment on the grounds that the child is already voluntarily enrolled in the employer/payor coverage; that coverage is not currently available because of a waiting period; that the employer/payor does not provide dependent coverage; or that the other parent is providing coverage for the child, explains the CSED is still required to issue the OTE. Further explains required procedures as applicable, and takes no further action on the contest.

e. If the parent contests the enrollment for any other reason, explains that due process was provided by the NIE, VEA, or NOCS, and no further administrative remedy is available. If the parent wishes to pursue the issue, suggests he or she seek legal advice re: available action outside the administrative process.

12. **Employer/payor response to OTE.** Processes the employer/payor response to the OTE in steps 12a through 12c below.

a. **No response.** If neither the employer/payor nor the plan administrator responds to the OTE within 40 working days of the date of service of the OTE, investigates and attempts to obtain an appropriate response in this step (12b or 12c) or step 13. Investigation should begin with the employer/payor, proceeding to the plan administrator if the employer/payor has forwarded the OTE as required. Enters a SEARCHS case note for the contact.

If attempts fail, documents the attempts and proceeds to enforce compliance through administrative civil contempt (as outlined in section CS 503.5), or through the special medical penalty provided by the Montana Medical Support Reform Act. (See NOTES 1 and 2 below for details.)

Note that the responses in 12b and 12c below are the **only** acceptable responses from the employer/payor. If neither applies, the employer/payor is required to forward Part B of the OTE to the plan administrator, and need not respond to the CSED.

NOTE 1: Enforcing Employer/Payor Compliance--Complete Package Required. If the employer did not receive a copy of the support order with the OTE package, the CSED cannot take contempt or penalty action against the employer until it serves on the employer the complete OTE package **with a copy of the support order(s) containing the medical obligation.** This situation may occur in cases where the OTE package was issued to a Montana employer, or to a non-Montana employer for a Montana work location, in January 2004 or later.

NOTE 2: Enforcing Employer/Payor Compliance through Contempt or Penalty Action. CSED action for administrative civil contempt is authorized under MCA § 40-5-813(4)(c). Unless circumstances dictate otherwise, the CSED determines the number of counts of contempt and the amounts to be entered as follows:

- For failure to forward Part B of the OTE to the plan administrator, $500 per month, beginning on the first day of the first month following the 20th day after service of the OTE.
- For failure to withhold premiums after receiving notification of enrollment from the plan administrator, $500 per pay period, beginning on the first day of the first pay period following the date of notification by the plan administrator.

The amount of $500 per count is authorized at MCA § 40-5-226(15). In addition, the CSED may impose a separate penalty of up to $150 under 40-5-813(4)(c). A penalty of $25 per day under MCA § 40-5-821 is also available through the CSED legal unit. See NOTE 3 for cases where the employer/payor is the parent's business.

NOTE 3: Serving the Contempt or Penalty Action on the Parent's Business. In the case where the employer/payor is a business owned and operated by the parent and registered with the Montana Secretary of State, additional service procedures apply. The CSED serves the contempt or penalty action on the business (via the registered agent if the business is a corporation) and, separately, on the parent. The order or citation initiating the action should list both the name of the business and the name of the parent.

b. **Request for copy of support order.** If the employer/payor requests a copy of the underlying support order(s) containing the medical support obligation, immediately sends a copy of the order(s). (This may occur in cases where the OTE package was issued to a Montana employer, or to a non-Montana employer for a Montana work location.)

c. **No insurance for this employee.** The employer/payor may respond that it cannot provide dependent health insurance for the parent because
   - it does not provide dependent health insurance for any employees, or
   - it provides dependent health insurance but the parent is not and will not become eligible for the insurance (e.g., the insurance is not available to part-time or non-union employees), or
   - it no longer employs/pays the parent.

Upon receiving this response, updates the SEARCHS MEC screen and issues form CS-510.8B, CP Action Letter to each affected obligee, informing the obligee that employer/payor insurance is not available. Proceeds to section CS 520.5 to determine the private insurance requirement and takes no further action in this section.

If the situation changes and insurance becomes available for the parent through this employer/payor, returns to step 10 to issue a new OTE. (See NOTE 2 following this step (12) for a possible EXCEPTION to this procedure.)

d. **Insurance exceeds federal withholding cap.** The employer/payor may respond that insurance is available but that the withholding required for the premium is prevented by limitations contained in the OTE (see NOTE 1 following this step (12)). (This response should occur, if at all, only **after** the plan administrator has responded in step 13b.)

Upon receiving this response, enters a SEARCHS case note. If the parent is the obligor in the case, proceeds in substeps 12d(i) through 12d(iv) below; if the parent is the obligee, proceeds directly to step 12d(iv).

  i. Investigates to determine whether hardship reduction of arrears under section CS 510.5 would allow for premium withholding. (This may require contact with the employer to determine the parent's net earnings and out-of-pocket share of the insurance premium. The hardship calculation should include the cost of the insurance premium.) Enters a SEARCHS case note for the results of the evaluation.

  ii. If the premium can be accommodated in substep 12d(i) above, issues a withholding order adjusting the arrears, and returns to step 10 to issue a new OTE.

  iii. If the premium cannot be accommodated in substep 12d(i) above, updates the SEARCHS MEC screen and issues form CS-510.8B, CP Action Letter to each affected obligee, informing the obligee that employer/payor insurance is not available.

  iv. Proceeds to section CS 520.5 to determine the private insurance requirement and takes no further action in this section.

  If the parent's net earnings or premium costs change, and employer withholding for premiums becomes possible, returns to step 10 to issue a new OTE.

e. **Insurance exceeds 5% of gross income.** The employer/payor may respond that insurance is available but withholding is prevented because the parent's premium costs would exceed 5% of gross income. Upon receiving this response proceeds to section CS 520.5 to process the employer hardship.

f. **Objection to length of OTE.** In responding to or complying with the OTE the employer/ payor may also state its objection to the length or volume of the OTE package. Upon receiving this objection contacts the employer and asks if the employer prefers to receive OTE packages without the instruction pages. If it does, submits an update to the employer's record on the SEARCHS EMU screen noting the "short OTE" request. Includes with the submission specific information documenting the employer's request (the date of the contact, whether the request was made by telephone or letter, the name of the person making the request). Note that the updated EMU record will cause the SEARCHS document generation function to automatically exclude the instruction pages in any OTE package issued for this employer.

If at any time in the future the employer/payor contacts the CSED requesting that OTE packages again include instruction pages, submits another update to the employer's EMU record to remove the short-OTE request. Includes the same type of documenting information as with the original request.

NOTE 1: Withholding Limits and Priorities. The OTE states that withholding for the required insurance premium, when added to withholding for current support and any arrears, may not exceed 50% of net earnings. This limitation is based on the provisions of the federal Consumer Credit Protection Act. Further, under Montana law withholding for child support has priority over withholding for health insurance. VOLUNTARY ENROLLMENT: If a child was voluntarily enrolled before the OTE was issued and the total withholding exceeds the cap, the OTE instructs the employer/payor not to automatically disenroll the child; although the CSED cannot order withholding that exceeds the statutory limit, the parent may wish to continue the enrollment and the withholding on a voluntary basis.

NOTE 2: Employer/Payor Response Terminates OTE. Once the employer/payor responds as in 12c or 12d above, the OTE is effectively terminated, without need for further action by the CSED; the caseworker should update the SEARCHS OTD screen to show the order status as inactive. If dependent health insurance later becomes available through this employer/payor, the employer/payor is not bound by the previously issued order, and the CSED must issue a new OTE to secure compliance. (EXCEPTION: If the caseworker is aware that the employer/payor is willing to honor the previously issued order, and to arrange with the plan administrator for any necessary written response, it may not be necessary to issue a new OTE. This exception is most likely to apply in cases where the parent was laid off, then reinstated within a short time after the employer/payor's response in 12c.)

13. **Plan administrator response to OTE.** Processes the plan administrator response to the OTE in steps 13a through 13e below.

    a. **No response.** If neither the plan administrator nor the employer/payor timely responds to the OTE within 40 working days of the date of service of the OTE, investigates and attempts to obtain an appropriate response in this step (13b through 13e) or step 12. Investigation should begin with the employer/payor, proceeding to the plan administrator if the employer/payor has forwarded the OTE as required. Enters a SEARCHS case note for the contact. If attempts fail, documents the attempts and consults with the regional legal unit concerning enforcement via medical penalty under MCA § 40-5-821. (Note that contempt action under MCA § 40-5-813(4)(c) is not available against the plan administrator.)

    b. **Children enrolled in coverage.** If the plan administrator responds that the children are enrolled or will be enrolled in dependent coverage, proceeds to step 14. (Note that this response includes coverage that takes effect after a waiting period of less than 90 days from the date the plan administrator received Part B of the OTE. For waiting periods of 90 days or more, see substep 13d.)

       NOTE: Enrollment Procedures. If the response in this substep (13b) applies, the OTE also requires the plan administrator to transfer the applicable enrollment information to the employer/payor "for a determination that the necessary employee contributions are available." If the employer/payor withholds and sends the required premiums, no further notification to the CSED is required. The OTE also requires the plan administrator to notify each obligee and to furnish the obligee with a summary plan description and information necessary to submit claims.

CAUTION: Effective coverage is not assured until the employer/payor forwards the required premiums to the plan administrator. Because the plan administrator is required to respond in this substep (13b) without waiting for confirmation of withholding from the employer/payor, actual coverage should not be assumed. If the employer/payor does not (or cannot) withhold and forward the necessary premiums, the plan administrator may simply drop the enrollment. If the caseworker does not receive an "exceeds cap" response from the employer/payor in step 12d, it may be advisable to investigate briefly to confirm that premiums are being paid. (The letter in step 14b cautions the obligee to confirm coverage with the insurance company before relying on it for the children's medical care.)

c. **Choice of option.** If the plan administrator responds that there is more than one option available under the plan, and

- the least expensive option (automatically pre-selected by the language of the OTE) has a limited service area, or
- there are two "least expensive" options,

reviews the descriptions of the options and chooses the least expensive option that is geographically accessible to the children. Consults with the obligee if necessary to determine geographic accessibility. Informs the plan administrator of the choice; documents the determination and the facts involved on SEARCHS, and proceeds to step 14.

NOTE: Requirement to Consult with the Obligee. The CSED is required to consult with the obligee concerning any choice of plan options. For this purpose the CP Action Letter sent in step 10 informs the obligee that the CSED will choose the least expensive plan option, and that the obligee should contact the CSED if there is any information about special coverage needs that may affect the CSED's choice. In special needs cases consults with the supervisor or CSED staff attorney regarding available courses of action.

d. **Waiting period 90 days or longer.** If the plan administrator responds that the parent has not completed a waiting period that

- expires more than 90 days after the date the plan administrator received Part B of the OTE, or
- is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked,

enters a SEARCHS case note for the extended waiting period, monitors for enrollment at the later time, and proceeds in this step (13) according to the results.

e. **Not a qualified order.** If the plan administrator responds that the OTE does not constitute a "qualified medical child support order," checks the reason for the response. If the problem is that essential information is missing in the OTE, proceeds to section CS 520.8 to issue an amended OTE. If the problem involves more than omitted information, consults with the CSED staff attorney and takes steps to resolve the issue.

NOTE: Qualified Order Status. Part B of the OTE states that receipt of the order from the CSED "constitutes receipt of a Medical Child Support Order under applicable law." The OTE is based on a federally designed and approved form; the only reason for rejection of its "qualified" status should be that the CSED has failed to include the name or address of a child or the parent, or that a child is too old to be considered a dependent under the terms of the plan.

14. **Processing enrollment information.** Upon being informed by the plan administrator, the parent, the obligee, or another source that a child in the case is enrolled in health insurance coverage, proceeds in 14a through 14c below as applicable.

    NOTE: Exception for Indian Health Service Coverage. Geographically accessible IHS coverage, while fulfilling the parent's health insurance obligation, is not recorded on the MID screen and does not require notification to the TPL program as in step 14a. Coverage is entered on SEARCHS by updating the MEC screen. If there is reason to believe the obligee is unaware the child qualifies for IHS coverage, the caseworker should notify the obligee of the coverage in writing (the CP Action Letter used in step 14b does not apply).

    a. Enters the insurance information on the SEARCHS MID screen; if the TPL number is unknown (see NOTE below), requests the number and enters a SEARCHS case note for the request.

       NOTE 1: Obtaining a TPL Number. The insurance information entered on the SEARCHS MID screen must include an identifying number issued by the Medicaid third-party liability (TPL) program. The caseworker requests the TPL number through the CSED Medical Liaison, who contacts TPL directly and provides the number received to the caseworker.

       NOTE 2: Notifying TPL. Entry of the insurance information on the SEARCHS MID screen automatically generates form CS-520.7B, Notification of Health Insurance Coverage. The form is printed by the CSED Medical Liaison, who uses it to update the SEARCHS SIC screen. The CSED Administrative Support Unit then forwards the information to the Medicaid third-party liability (TPL) program, and enters a SEARCHS case note for the information sent.

    b. For coverage provided by the obligor (through the employer/payor or alternative coverage), prepares and sends form CS-510.8B, CP Action Letter, informing the obligee of the coverage and providing information for contacting the insurance company. (This version of the letter is generated automatically from the SEARCHS MID screen when the policy is loaded in step 14a.)

For coverage of children residing with a third-party obligee, where the coverage is provided by a parent who

- has or may have a medical support obligation for the children, and
- is an obligee for other children in the case or is not a participant in the case,

informs the third-party obligee of the coverage via form CS-510.8B, CP Action Letter. (When used in this situation the letter must be generated manually by the caseworker. The letter should include coverage information and information for contacting the insurance company.)

OPTIONAL: For any coverage provided by a person other than a parent of the children, informs the children's obligee(s) of the coverage via form CS-510.8B, CP Action Letter. (When used in this situation the letter must be generated manually by the caseworker. The letter should include coverage information and information for contacting the insurance company.)

c. Monitors for continued coverage as in section CS 520.3. If coverage lapses, updates the SEARCHS MID screen for the insurance ended, investigates the cause of the lapse, and proceeds in 14c(i) through 14c(iv) below as applicable. For a lapse in coverage provided by the obligor, also prepares and sends form CS-510.8B, CP Action Letter, informing the obligee the coverage has lapsed. (This version of the letter is generated automatically when the MID screen is updated for the loss of coverage.)

   i. If the parent's employment has terminated, checks for a new employer/ payor; if found, begins again at step 9. If the parent is the obligor in the case, also updates the SEARCHS EMP screen for the terminated employment and any new employer.

   If no employer/payor is found, follows procedures in section CS 520.3 for identifying health insurance, locating employment, or confirming unemployment.

   ii. If the employer/payor or plan administrator has fallen out of compliance with the OTE, proceeds as in step 12a or 13a to enforce compliance.

   iii. If the plan administrator has disenrolled the children because the parent has provided proof of alternative coverage, proceeds in this step (14) as applicable for the new insurance.

   iv. If the employer/payor has been unable to maintain the necessary withholding for coverage, proceeds to step 15.

15. **Lapses in Withholding Ability.** Upon discovering that coverage obtained in step 13 has lapsed, and that the lapse is due to the employer's inability to withhold premiums because

- the premium costs now exceed the federal withholding cap (see the NOTE following step 12c), or
- the premium costs now exceed 5% of the parent's gross income, or
- the parent is now ineligible (part-time, laid off pending possible return, etc.),

investigates the circumstances with the employer, enters a SEARCHS case note for the employer contact, and proceeds in steps 15a through 15c below, as applicable.

a. **Permanent loss of withholding ability.** If it appears the withholding ability will be lost permanently (eligibility or earning levels will not return to pre-lapse status within 6 months), proceeds as in section CS 520.5 for employer insurance that is too expensive or is not available, and takes no further action in this section.

b. **Temporary loss of withholding ability.** If it appears the withholding ability will be lost only temporarily (eligibility or earning levels will return to pre-lapse status within 6 months), enters a case note for the temporary nature of the lapse.

    i. If the employer/payor and the plan administrator have agreed to reinstate coverage under the **existing OTE**, monitors for reinstatement, and proceeds in step 14 at that time.

    ii. If the employer/payor or the plan administrator requires a **new OTE** to reinstate coverage, returns to step 10 to issue a new (original) OTE.

    For a lapse caused by a "cap" issue, also proceeds as applicable in step 12d.

c. **Fluctuations in withholding ability.** If the situation will continue to fluctuate (the parent's eligibility or earning levels will alternately accommodate and prevent withholding), evaluates the following options and proceeds with any that will improve the coverage situation. Monitors for any change to a stable condition and proceeds in step 15a or 15b at that time.
    (1) Adjusts arrears to overcome "cap" issues as in step 12.
    (2) Performs a medical hardship determination in section CS 520.5 averaging the parent's monthly gross income.
    (3) Discusses the situation with the employer/payor or plan administrator (there may be a mechanism available where coverage can be continued in the circumstances).
    (4) Investigates the feasibility of any other actions to enforce continuous coverage in the case.

16. **Expedited enforcement of medical cost sharing.** In cases where the child is receiving Medicaid benefits and the support order requires the obligor and obligee to share medical costs, if either parent applies to the CSED for a judgment against the other parent for reimbursement of copayments, deductibles, insurance premiums, or other uncovered costs and expenses, consults with the CSED staff attorney and takes action as instructed. In non-Medicaid cases, informs the applying parent that relief is available only in district court.

NOTE: Statutory Basis for Enforcing Medical Cost Sharing. If a parent is obligated by a medical support order to pay a share of the other parent's medical costs for a child receiving Medicaid benefits, the CSED may, on application of the other parent, conduct a show-cause hearing under MCA 40-5-824 to determine whether to award relief. Also under 40-5-824, either obligated parent can petition the district court for relief if the support order provides for medical cost sharing, regardless of whether the child is receiving Medicaid benefits.

17. **Loss of CSED Enrollment Authority.** ***[This step applies only in cases where the enforcement parent is the obligor. See section CS 520.3 for direction in situations where the enforcement parent is an obligee in the case and a child goes to live with another non-parent obligee.]*** In a case where the CSED loses the authority to maintain ordered enrollment of a child because the child goes to live with another custodian in the CSED case, and the medical support order does not "follow the child" to that custodian under MCA section 40-5-290, proceeds in 17a through 17c below.

    a. Disenrolls the child from the existing coverage by amending or terminating the existing OTE in section CS 520.8. Inactivates the child on the SEARCHS NID screen.

    b. Proceeds to establish a support order for the child with the new custodian. (See section CS 401.3, Notice and Order Concerning Support. Note that the new order will contain an immediate enrollment provision, and will be enforceable for any subsequent custodian of the child.)

    c. Completes a new SEARCHS NID screen for the child as in step 3; issues an OTE for the child by proceeding in step 10 for an original OTE (if no other children in the case are currently enrolled) or in section CS 520.8 for an amended OTE (if other children in the case are still enrolled).

18. **Case or subcase closure.** In a case where the CSED loses the authority to maintain ordered enrollment of a child because the child's case or subcase is closed, disenrolls the child as in step 17a. It is not necessary to inactivate the child on the NID screen unless there are other children in the case for whom the CSED is continuing to enforce medical support. (If the case is reopened the underlying support order and the previously resolved notice will again apply.)

19. **Proceeding Against the Other Parent.** When the combined enforcement actions of this section and sections CS 520.5 and CS 520.10 do not result in coverage of the children in the case, and the conditions below apply, proceeds to enforce against the other parent to obtain health insurance for the children.
    (1) The other parent is an obligor or obligee in this case.
    (2) The other parent is required by the provisions of the support order to provide health insurance for the children.

(3) If the other parent is an obligee in the case, restrictions in section CS 520.3 concerning third-party cases do not prevent the CSED from enforcing against the parent obligee for at least some of the children.
(4) The other parent is not the parent identified by the most recent application of the CSED's Enforcement Parent Decision Matrix in section CS 520.3.

Proceeds against the other parent by beginning again at step 1. The other parent now becomes the "enforcement parent" for purposes of this section.

Attachment 1. Exhibits for NIE Hearings

REQUIRED EXHIBITS

The following exhibits are required to support testimony on the issues and elements of the case presented at hearing:

(1) Authorization to act/assignment of rights
(2) Copy of the Notice of Intent to Enroll
(3) Proof of service (green card, acknowledgment, sheriff's return)
(4) Copies of all known support orders for the children
(5) The following documents related to the employer insurance (if employer insurance is available to the parent):
  (a) Insurance rate sheet and completed form CS-404.6A, Financial Affidavit (or electronic verification of income in lieu of the financial affidavit)
  (b) [In lieu of the documents in 5a:] Form CS-520.5B, Payor's Statement completed by the employer
  (c) [In lieu of the documents in 5a/5b:] Form CS-220, Employment Verification (must contain both wage and insurance information)
  (d) Form CS-520.5C, Medical Hardship Calculation, completed for the employer insurance.

(Note that the documents in item (5) above are required whenever employer insurance is available, regardless of whether the parent has stated any objection to the cost of insurance.)

OTHER EXHIBITS--MAY BE REQUIRED

The following exhibits may be required in addition to the exhibits listed above, depending on the issues that could be raised at hearing given the facts of the case.

(1) **Geographic accessibility.** If the parent and child reside in different states, and employer insurance is available to the parent, a copy of the summary plan description detailing any geographic limitations of the plan may be required.

CONSIDERATIONS: If the parent has agreed that the coverage is geographically accessible to the child, the copy of the summary plan description may not be needed. However, if the parent then raises the issue at hearing and the exhibit is not available, the ALJ may order an additional (continued) hearing to allow the copy of the plan to be presented. Also, the testimony of the plan administrator concerning specific geographic limitations may be required.

(2) **Alternative coverage.** If the parent is claiming alternative coverage and the CSED disagrees, information will be required showing that the alleged coverage does not exist, or that it is not attributable to the parent. This may include hard-copy information from the insurance provider about whether the children are covered, or about the identity of the

policy holder. (Testimony from the insurance provider or from other persons having knowledge about the alleged coverage may also be required.)

CONSIDERATIONS: Any indication (in conversation, hearing request, or other correspondence) that the parent may claim alternative coverage at the hearing is reason to prepare the exhibits and testimony described in this item. However, if the CSED agrees that alternative coverage exists and that it is attributable to the parent (and the parent still insists on a hearing), the exhibits or testimony related to this issue may not be needed.

(3) **Enforcement steps.** [Optional] Exhibits from the case file showing the CSED's medical enforcement steps may be useful. Optional exhibits may include but are not limited to Confirmation of Health Insurance Status; letters; or Employment Verification.

SUPERSEDES

CS 520.8, Amending/Terminating the Order to Enroll, July 29, 2003

REFERENCES

MCA §§ 40-5-208 and 40-5-801 through 40-5-825.

TERMINOLOGY

As used in this section the term **"parent"** means the enforcement parent who is the subject of the original OTE action in section CS 520.7, Enforcing Health Insurance Orders. Also, the term **"affected obligee"** means an obligee who is the custodian of one or more enforcement children in the case, and who is not the enforcement parent.

POLICY

OTE Currently in Effect. The CSED may amend or terminate an Order to Enroll (OTE) only if the OTE is "currently in effect." An OTE is considered currently in effect if the CSED

- has not received a response to the OTE indicating the children cannot be enrolled,
- has not terminated the OTE,
- is not aware of any disenrollment action by the plan administrator based on alternative coverage provided by the parent, and
- is not aware of any lapse in withholding that has resulted in a permanent loss of coverage.

A lapse in withholding may be caused by termination of the parent's employment, or by reduction in the parent's earnings to the extent that withholding is no longer possible under the limitations of the federal Consumer Credit Protection Act.

To obtain coverage for a child in a case where the original OTE listing the child is no longer in effect, the CSED must issue a new OTE under the procedures in section CS 520.7, Enforcing Health Insurance Orders.

Adding a Child to Coverage. To add a child to an OTE that is currently in effect in the case (for other children of the same biological unit), the CSED must satisfy the same due process requirements as those in the original action. Specifically, the CSED must serve and resolve notice of its intent to enroll the additional child, and must process any case facts concerning affordability, accessibility, and alternative coverage, as in section CS 520.7.

Disenrolling a Child from Coverage. The CSED may order disenrollment of a child from existing coverage only if the CSED is no longer enforcing medical support for the child through that employer/payor. For purposes of this section the CSED is no longer enforcing medical support if

- the child's subcase is being closed;
- the child has emancipated;
- the child has gone to live with a custodian for whom the CSED has no authority to enforce medical support;
- there is another OTE currently in effect for the child with a different employer/payor, and the CSED elects to maintain that other coverage;

- the parent has proved that the OTE was issued in error (for example, against the wrong person, or in the absence of a health insurance requirement), or that the insurance is geographically inaccessible or too expensive, or that there is alternative coverage for the child that was in place when the OTE was issued.

In ordering the disenrollment of a child the CSED instructs the employer/payor to first determine whether the parent wishes to continue enrollment and any necessary withholding on a voluntary basis. If so, the employer/payor continues to withhold and forward premiums, and informs the plan administrator of the new coverage status.

Other Changes to an Existing OTE. The CSED amends an OTE whenever a child listed in the OTE changes custodians. The formal amendment action is necessary to ensure that the plan administrator provides the new custodian with information on access to coverage, as required by Montana law. The CSED also amends an OTE when there is a change or correction to the child's personal information essential to maintaining coverage for the child. Changes in OTE data relating to the parent or the underlying support order do not require amendment of the OTE, but are accomplished by a letter to the employer/payor and the plan administrator. In the case of a change in the custodian's address, the CSED relies on previous instructions to the custodian and the plan administrator to jointly update the custodian's address as necessary.

Terminating the OTE. The CSED issues an Order Terminating Enrollment only to disenroll all the children for whom coverage is currently in effect. There is no need for a termination order in cases where enrollment never occurred (the employer/payor did not offer dependent coverage, the parent was not eligible, or premiums exceeded federal withholding limitations or the Montana threshold for reasonable cost). Nor is a termination order required when enrollment has been discontinued by the plan administrator based on a lapse in withholding (see "OTE Currently in Effect" above) or proof of alternative coverage.

PROCEDURES

Caseworker

1. **Conditions for Amendment or Termination.** Proceeds in this section for any child for whom (1) or (2) below applies; see POLICY for definition of OTE "currently in effect":

    (1) The CSED wishes to add the child to an Order to Enroll (OTE) that is currently in effect for other children of the same biological unit, and the conditions for issuing an enrollment order for the child--given in section CS 520.7--have been met. **(Amend the OTE)**

    (2) The child is listed in an OTE that is currently in effect, and the CSED wishes to take the following action:

(a) Disenroll the child from the existing coverage, while allowing other children listed in the OTE to remain enrolled. (See reasons for disenrollment in POLICY.) **(Amend the OTE)**

(b) Disenroll the child, along with all other children listed in the OTE, from the existing coverage. (See reasons for disenrollment in POLICY.) **(Terminate the OTE)**

(Note that if other children are being added to the coverage at the same time, the CSED must **amend** rather than terminate the OTE.)

(c) Change the custodian listed in the OTE for the child. **(Amend the OTE)**

(d) Change/correct the child's name, social security number, or date of birth listed in the OTE. **(Amend the OTE)**

(Note that if it is necessary to change any other data listed in the OTE, amendment does not apply. A letter to the employer/payor and plan administrator may be required--see POLICY.)

2. **Amending the OTE.** For all children identified for amendment action in step 1, amends the OTE by proceeding in steps 2a through 2e below. Note that it is possible to amend the OTE for more than one purpose at the same time. For example, the amendment action may disenroll one child and add another.

a. **Amended OTE package.** Prepares an amended Order to Enroll (OTE) package containing
- form FED-MED, amended National Medical Support Notice (NMSN);
- form CS-520.7M, Order to Enroll Supplement;

(Forms FED-MED and CS-520.7M are generated together via the SEARCHS OTD2 screen.)

- [for non-Montana employers only:] for any child being added by the amendment action, a copy of the support order containing the requirement for health insurance, unless the support order was provided with the previous OTE; and
- a completed Acknowledgment of Receipt of Order(s) and Waiver of Service (half-page form available in the regions in hard copy).

In generating the amended OTE package, includes all the children identified in step 1, plus any children listed in the existing OTE for whom no changes in information, custodian, or coverage apply.

Follows instructions in section CS 520.7, where applicable, for omitting instructions, generating and signing cover letters, checking for any domestic violence indicator, checking the NMSN for the correct underlying support orders, and obtaining the appropriate signature on the NMSN document.

AMENDED OTE PACKAGE: The amended NMSN will be accompanied by a special "Amendment Instructions" page preceding Part A and Part B of the updated document. The Amendment Instructions will explain what is being changed about the existing order (adding or disenrolling a child, changing a child's custodian or essential data), and will instruct the employer/payor and the plan administrator to replace the previously issued NMSN with the enclosed document. The new NMSN will list all the children who should now be enrolled in coverage, including children from the previous NMSN whose coverage is not being changed.

b. **Service of amended OTE.** Arranges for service of the amended OTE package on the employer/payor as in section CS 520.7 and updates the SEARCHS OTD screen for the service obtained. EXCEPTION: If the amendment action is for the sole purpose of disenrolling one or more children, the package may be sent by regular mail.

c. **Notifications.** Sends a copy of the signed amended OTE package to the parent by regular mail.

For any child being added by the amendment action, prepares and sends form CS-510.8B, CP Action Letter, to the affected obligee by regular mail; in generating the document selects the variable for health insurance ordered.

For any child being disenrolled by the amendment action sends form CS-510.8B, CP Action Letter, to the affected obligee by regular mail, informing the obligee the CSED has terminated the enrollment order for the child. (This version of the letter is generated automatically from the SEARCHS MID screen when the child is removed from the policy in step 2e.)

For any child whose custodian is being changed by the amendment action, prepares and sends form CS-510.8B, CP Action Letter, to the child's new custodian by regular mail, informing the obligee the CSED has identified health insurance on the child. (This version of the letter is generated by the caseworker from the SEARCHS MID screen.) Also prepares and sends form CS-510.8B to the child's previous custodian, selecting the variable for medical enforcement discontinued.

CAUTION: In notifying an affected obligee of an amendment action, it is not appropriate to send a copy of the amended OTE.

d. **Response to amended OTE.** For any child being added by the amendment action, monitors for response to the amended OTE, and proceeds as in section CS 520.7. (Disenrollment of a child, or a change in the child's custodian or essential data, does not require a response action by the employer/payor or plan administrator.)

e. **SEARCHS update.** Updates the applicable SEARCHS medical screens for each child affected by the amendment action.

3. **Terminating the OTE.** For a termination action identified in step 1 proceeds in steps 3a through 3c below.

(Note that if any children are being added to or retained in the existing coverage, termination of the OTE is not appropriate.)

a. **Order Terminating Enrollment.** Prepares form FED-MED, Order Terminating Enrollment (generated via the SEARCHS OTD1 screen). The document will automatically include all the children listed in the existing OTE.

Checks the document for accuracy and signs or obtains the supervisor's signature on Parts A and B.

ORDER TERMINATING ENROLLMENT DOCUMENT: The Order Terminating Enrollment operates similarly to the OTE, in that it includes a Part A to the employer/payor and a Part B to the plan administrator. However, the content of the document is unlike the OTE or the amended OTE; it briefly informs the employer/payor and the plan administrator that the case has changed since the most recent OTE was issued, and that the children should be disenrolled unless voluntary continuation of coverage applies. No response to Part A or Part B is required.

b. **Service/Notification.** Sends the original Order Terminating Enrollment (Part A and Part B) to the employer/payor by regular mail. (The employer/payor will forward Part B to the plan administrator.) Sends a copy of the order to the parent.

Sends to each affected obligee by regular mail form CS-510.8B, CP Action Letter, informing the obligee the CSED has terminated the enrollment order. (This version of the form is generated automatically from the SEARCHS MID screen when the children are removed from the policy or the policy is closed in step 3c.)

CAUTION: In notifying an affected obligee of a terminating action it is not appropriate to send a copy of the Order Terminating Enrollment.

c. **SEARCHS update.** Updates the applicable SEARCHS medical screens for each child listed in the termination order.

SUPERSEDES

CS 520.10, Enforcing Health Insurance Orders--Penalty Actions, July 29, 2003

REFERENCES

MCA §§ 40-5-226(13) through (18) and 40-5-821.

POLICY

Applicability. The CSED takes action in this section to enforce private insurance when all of the following conditions apply:

(1) The subject of the action is the enforcement parent identified in section CS 520.3, or later identified in section CS 520.7.
(2) Health insurance is not available to the parent through the parent's employment because the situation in (a), (b), or (c) below applies:
  (a) The employer/payor does not offer dependent health insurance to its employees.
  (b) The employer/payor offers dependent health insurance to its employees but the insurance is not available to the parent because
    - the parent is not eligible for the insurance,
    - the insurance premium would exceed the federal withholding cap, or
    - the insurance is not geographically accessible to the child.
  (c) The CSED has not been able to locate an employer/payor for the parent.
(3) The parent's health insurance obligation includes non-employer (private) insurance.
(4) The parent is not providing, and has not made application to provide, private health insurance coverage for the children.
(5) The CSED is aware of private dependent health insurance that is available to the parent at a reasonable cost.
(6) The CSED has notified the parent that private insurance is available at a reasonable cost, and has informed the parent of the consequences of failure to provide the coverage.

EXCEPTION: The procedures in this section may also apply if the enforcement parent has not responded to a request for confirmation of coverage or employment status, and the CSED has been unable to obtain information about employment or unemployment from any source.

Employer/Payor for Health Insurance Enforcement. For purposes of applying condition (2) above, an "employer" is (1) an income-paying entity other than the parent himself/herself, or (2) a business owned and operated by the parent that is registered with the Montana Secretary of State as a DBA (Doing Business As) or as a corporation. Note that a self-employed parent whose "employer" does not satisfy this definition is considered unemployed for purposes of the above conditions, and health insurance is not available to that parent through employment.

Enforcement by Medical Penalty (Daily Penalty). The CSED may take penalty action against the parent under MCA § 40-5-821. This statute provides for a special medical penalty of up to $25 for each day that a parent knowingly violates a medical support order by failing to provide health insurance when it is available at a reasonable cost. To assess the penalty the CSED must hold a show-cause hearing on the alleged failure.

Procedures for the required penalty hearing are given in this section. Once assessed, penalties may be collected by any means available for the collection of child support, such as income withholding, seizure of bank accounts, etc. Medical penalties previously assessed in conjunction with the old Notice of Intent to Enroll and Assess Health Insurance Penalty (NOIEH--used prior to July 2001, now obsolete) are still valid unless dismissed.

Enforcement by Contempt Action (Monthly Penalty). Montana law also allows for enforcement of private insurance by contempt action. The resulting contempt penalty is not considered a "medical penalty" for purposes of this section--see section CS 503.5, Administrative Civil Contempt, for procedures for pursuing a contempt. For purposes of medical support enforcement, the CSED generally allows one "count" of contempt for each month the parent fails to provide insurance.

CSED policy permits assessment of either the medical penalty or the contempt penalty, but not both, for a given period of time. When both could apply, the CSED selects the one that is more likely to produce compliance based on the facts of the case.

Enforcement by Case closure or Non-Cooperation Action. In cases where the parent is the non-public assistance obligee or the applicant for CSED services, the CSED enforces private insurance by initiating case closure procedures. If the parent is the public assistance obligee, the CSED enforces the insurance by citing the parent for non-cooperation with child support requirements. Case closure and non-cooperation actions are taken in lieu of monetary penalty actions.

Obtaining the Desired Result. The purpose of any penalty, contempt, closure, or non-cooperation action is to persuade the parent to provide health insurance, or to identify an employer/payor for successful enforcement of the health insurance obligation. If either of these purposes is accomplished before the action is completed, the CSED may discontinue the action.

PROCEDURES

Caseworker

1. **Determining appropriate action.** Upon identifying a case in section CS 520.5 where
   - insurance is not available to the enforcement parent through employment; and
   - private insurance is included in the health insurance obligation and is reasonable in cost; and
   - the parent has failed to provide the insurance after being notified of the private insurance requirement, the reasonable cost determination, and the consequences of non-compliance,

   determines the appropriate action in 1a through 1d below, and proceeds accordingly.

SPECIAL CASES: The medical penalty in step 1a may also be used in cases where the parent has not responded to a request for employment information in section 520.3, and the CSED has been unable to obtain information concerning employment or unemployment from any source.

a. **Medical penalty.** If the parent is the obligor in the case and is not the applicant, and
   - the support order was not entered by the CSED, or
   - the support order was entered by the CSED and the daily medical penalty would be more effective in obtaining coverage of the children than the monthly contempt penalty in step 1b,

   proceeds to step 2 to initiate the medical penalty action.

b. **Contempt.** If the parent is the obligor in the case and is not the applicant, and
   - the support order was entered by the CSED, and
   - the monthly contempt penalty would be more effective in obtaining coverage of the children than the daily medical penalty in step 1a,

   proceeds to section CS 503.5, Administrative Civil Contempt, to initiate the contempt action. Proceeds under the general guidance of the regional legal unit in preparing the required documents, participating in the contempt hearing as a witness, and, if applicable, identifying collection options. If a penalty is ordered, loads the penalty on SEARCHS as in step 13a. If the contempt does not result in coverage, proceeds to step 15.

   Discontinues the contempt action if the parent obtains coverage of the children.

c. **Case closure.** If the parent is the non-public assistance obligee, or is the obligor applicant for CSED services, initiates case closure procedures. Discontinues the closure action if the parent obtains coverage of the children. (Note: In unusual cases where the monetary penalty in step 1a would be more effective than case closure in gaining coverage, the CSED may choose to enforce the obligation through the penalty process.)

d. **Non-cooperation.** If the parent is the public assistance obligee, initiates action to cite the parent for non-cooperation with child support enforcement requirements. If the non-cooperation does not result in coverage, proceeds to step 15. Discontinues the non-cooperation action if the parent obtains coverage of the children.

2. **Motion and order; penalty amount.** Prepares and signs form CS-520.10B, Motion and Order for Medical Penalty Hearing; determines the penalty amount as described below:

   Sets the amount of the penalty at $25 times the number of days that the parent failed to provide health insurance as ordered, through the current date. The penalty period may begin with the first payment date of the support order requiring the insurance, or with any significant event after that. For example, the penalty may begin with the date that

- the NIE was resolved,
- the parent failed to respond to the Confirmation of Health Insurance Status,
- the employer responded to the OTE stating no insurance was available,
- the parent left employment where insurance was available,
- the parent allowed private insurance to lapse,
- the parent was notified of the private insurance requirement and the consequences of failing to obtain the insurance, or
- a medical hardship for the private insurance was denied.

Regardless of the reason for the penalty start date, in no case sets the date earlier than one year before the current date.

3. **Sending Motion and Order to OALJ.** Mails the original Motion and Order to the Office of the Administrative Law Judge (OALJ), retaining a copy for the file. Advises the OALJ of the caseworker's telephone number and any dates the caseworker is not available during the time the hearing will be scheduled. Monitors for a response from the OALJ within 20 days.

Office of the Administrative Law Judge (OALJ)

4. **OALJ intake.** Upon receipt of the motion mailed in step 3, enters a SEARCHS case note and forwards the motion to the Administrative Law Judge (ALJ).

Administrative Law Judge (ALJ)

5. **ALJ determination.** Reviews the motion. If sufficient cause exists, grants the motion and signs the order portion of the document; if not, denies the motion. Initials the document to indicate the disposition of the motion, and forwards the complete document to the hearing assistant.

OALJ

6. **OALJ return to caseworker.** Processes the ALJ's response to the motion as follows: Enters the appropriate SEARCHS case note for the response. If the motion has been granted, schedules the hearing according to regular OALJ hearing procedures, completes the order portion of the document, and attaches a Telephone Hearing Instructions sheet. If the motion has been denied, enters no further information on the document. In either case, makes a file copy and returns the original (signed or denied), complete Motion and Order for Medical Penalty Hearing to the caseworker; enters a SEARCHS case note for the Motion and Order sent.

Caseworker

7. **Service of Motion and Order.** Upon receiving a Motion and Order for Medical Penalty Hearing signed by the ALJ, enters a SEARCHS case note, makes copies, and

arranges for service of the document on the parent (original and one copy) by sheriff or private process server, or by acknowledgment. For service by acknowledgment also encloses a self-addressed stamped envelope. Enters a SEARCHS case note for the Motion and Order sent.

Sends one copy to any affected obligee by regular mail.

Monitors for successful service, and enters a SEARCHS case note when service is obtained. In the case of service by acknowledgment, if a signed acknowledgment is not returned within 20 calendar days after the mailing date, immediately arranges for service by sheriff or private process server.

If service is not obtained by one week before the hearing date, works with the regional legal unit to request the hearing date be vacated. Issues a new Motion and Order if and when it appears likely service can be obtained.

8. **Exhibits.** Upon obtaining service in step 7, prepares exhibits for the CSED's case at hearing. Sends the original exhibits, along with form CS-405.11A, Witness and Exhibit List, to the OALJ by the exhibits due date; sends copies of the exhibits and list to the parent. Required exhibits are listed in (1) through (4) below:

   (1) The CSED's authority to act (Assignment of Rights or Authorization to Act)
   (2) The CSED's personal jurisdiction over the parent, under MCA 40-5-231 or 40-5-145 (e.g., proof of service in Montana, or a Montana support order)
   (3) Proof of service of the Motion and Order for Medical Penalty Hearing
   (4) Additional exhibits to show that
       - the parent did not provide private health insurance as ordered,
       - the CSED took reasonable steps to make that determination, and
       - the CSED took required action to enforce the obligation through the parent's employer/payor if applicable.

   "Additional exhibits" to support the statements in (4) above may include
   - the support order requiring the parent to provide insurance through a group or individually;
   - the employer/payor response, if any, to the OTE stating employer/payor insurance is not available to the parent under an OTE;
   - any evidence the parent is unemployed;
   - any evidence of group or individual insurance that may be available to the parent at a reasonable cost, with evidence or information on the parent's income;
   - evidence of the issuance of form CS-520.3B, Confirmation of Health Insurance Status, and the parent's response or failure to respond, or--failing adequate response--the actions taken to determine the status of employment or insurance;
   - a Medical Hardship Calculation showing the available private insurance is reasonable in cost.

9. **Parent's compliance.** If before the hearing the parent contacts the CSED and

- provides proof of insurance coverage,
- obtains a medical hardship, or
- provides the name of a previously unknown employer/payor,

takes action as indicated in section CS 520.5, and proceeds in 9(a) or 9(b) below.

a. In the case of new insurance coverage or a medical hardship granted, works with the regional legal unit to prepare a motion to the ALJ to vacate the hearing, documents the reason on SEARCHS, and takes no further action in this section.

b. In the case of a new employer/payor, proceeds in 9(a) above only when an OTE is successful in obtaining coverage. If an OTE cannot be issued and resolved before the hearing date, requests a continuance. If an OTE is not successful in obtaining coverage, proceeds to step 10 below.

NOTE: Maintaining Penalty Action for Pre-Compliance Period. At the caseworker's discretion, in cases where the parent takes appropriate action after being served with the Motion and Order for Medical Penalty Hearing, it may be beneficial to maintain the penalty action (and proceed with the hearing) to obtain a penalty for the period before compliance.

10. **Hearing participation.** Prepares testimony and participates in the hearing as a witness; enters a SEARCHS case note for the testimony presented. At the caseworker's option, at the time of the penalty hearing moves the ALJ to extend the penalty period to include the days from the motion date through the hearing date.

ALJ

11. **Hearing conducted.** Conducts the medical penalty hearing according to the requirements of ARM 37.62.941 and 37.62.945. Issues a proposed decision and order, any applicable ruling on a motion to review, and a final decision and order according to ARM 37.62.949 and 37.62.951. Enters the appropriate SEARCHS case notes.

OALJ

12. **OALJ processing of D&O.** Processes the proposed decision and order, any motion to review, and the final decision and order according to standard CSED procedures, including mailing copies to the caseworker, the parent, and any affected obligee. Enters the appropriate SEARCHS case notes.

Caseworker

13. **Implementing the medical penalty.** Enters the appropriate SEARCHS case notes for receipt of the proposed and final decisions and orders from the medical penalty hearing. Acts on the final decision and order as follows:

a. **Penalty ordered.** If a medical penalty is ordered for the parent obligor, enters the order on the SEARCHS SOD screen; sets up the necessary SEARCHS account by entering the applicable case note for fees and fines. Pursues collection of the penalty through any appropriate enforcement action, including but not limited to income withholding, warrant for distraint, federal or state offset, or other seizure of assets. (In very rare cases where a medical penalty is ordered against the parent obligee, consults with regional legal staff and CSED fiscal staff to adapt collection and distribution procedures as necessary.)

   If the decision and order also finds that private health insurance is reasonable in cost, monitors for enrollment according to the procedures in section CS 520.3. Returns to this section if and when necessary to achieve compliance. If coverage cannot be obtained despite diligent application of the penalty process, proceeds to step 15.

b. **Penalty not ordered.** If a medical penalty is not ordered, proceeds to step 15.

14. **Dismissing penalty at case closure.** For a medical penalty obtained in step 13, if the penalty has not been collected in full at the time of case closure and the health insurance obligation for the child has ceased, works with the regional legal unit to prepare a special motion to dismiss the penalty. (The penalty should not be dismissed if the CSED would reinstate the obligation or begin collecting arrears upon case reopening.)

15. **Proceeding Against the Other Parent.** When the combined enforcement actions of this section and sections 520.5 and 520.7 do not result in coverage of the children in the case, and the conditions below apply, proceeds to enforce against the other parent to obtain health insurance for the children.

    (1) The other parent is an obligor or obligee in this case.
    (2) The other parent is required by the provisions of the support order to provide health insurance for the children.
    (3) If the other parent is an obligee in the case, restrictions in section CS 520.3 concerning third-party cases do not prevent the CSED from enforcing against the parent obligee for at least some of the children.
    (4) The other parent is not the parent identified by the most recent application of the CSED's Enforcement Parent Decision Matrix in section CS 520.3.

    Proceeds against the other parent (who now becomes the "enforcement parent") by returning to section CS 520.7 and pursuing insurance through employment. If necessary, proceeds for the new enforcement parent to section CS 520.5, and to this section if applicable, until coverage is obtained or all remedies are exhausted.

SUPERSEDES

CS 530.1, Administrative License Suspension--Overview, August 1, 1996.

REFERENCE

MCA 40-5-701 et seq.

INTRODUCTION

When an obligor owes a support debt equal to or greater than six months' support (child or spousal), or a person fails to comply with a CSED subpoena, the CSED may initiate administrative license suspension proceedings to enforce the debt or the subpoena. This section provides general policy on the appropriate use of license suspension as an enforcement tool, and gives definitions for terms used in connection with license suspension.

POLICY--ENFORCING A DEBT

General Discretion. License suspension is available as an enforcement tool at any time after the establishment of a support obligation, and should be included in the "checklist" of methods the CSED can apply to collect support in a case. There is no requirement to exhaust other enforcement methods before proceeding with administrative license suspension. However, the caseworker must apply a certain discretion in selecting cases for license suspension action. Briefly, there must be a reasonable expectation the action will produce a beneficial effect, in light of both existing collections and collection potential in the case. PROCEDURES in section CS 530.2 (step 3) give a number of more specific considerations for identifying cases appropriate for license suspension.

Lack of Income and Assets. One of the considerations listed in section CS 530.2 relates to the obligor's involuntary financial position. **The intent of administrative license suspension is not to suspend licenses but to enforce payment of support.** Therefore, in cases where the obligor has minimal assets and no potential to earn income, the license suspension process will likely be inappropriate. In considering potential to earn income, the caseworker should take into consideration previous work history, past prison records, physical or mental incapacity, and any other personal history that would make it difficult for the obligor to earn income beyond subsistence.

POLICY--ENFORCING A SUBPOENA

License suspension is also available for enforcing compliance with a CSED subpoena. However, this application should be reserved for cases where compliance is essential to successful advancement of the case, and suspension action is likely to persuade the person to comply. License suspension may be used as an alternative to, or in conjunction with, other “indirect” techniques available to the CSED for enforcing subpoenas, such as administrative contempt and court-compelled genetic testing. The CSED gained the authority to suspend licenses for noncompliance in 1997, and anticipates (as of this writing) the activity will not be broadly applied, but limited to special cases where there is a particular benefit.

DEFINITIONS

In addition to the definitions in MCA § 40-5-701, the following definitions apply:

"**ALTERNATIVE PAYMENT PLAN**" is the payment plan offered by the CSED when the obligor claims financial inability to pay the current support obligation plus the amount toward the support debt that would be offered in a Financial Hardship Payment Plan. The total payment amount may be any amount agreed by the caseworker, including an amount less than the current support obligation. The Alternative Payment Plan provides for renegotiation when the obligor's ability to pay changes, or when the support obligation is modified; it may include special conditions in addition to payment; it states the legal support obligation is not changed when the payment amount is for less than current support; and it does not contain a voluntary withholding authorization.

"**FINANCIAL HARDSHIP PAYMENT PLAN**" is the payment plan offered by the CSED when the obligor claims financial inability to pay the current support obligation plus a payment of 1/24 of the total support debt amount. When determining a financial hardship payment plan amount, the caseworker uses form CS-510.5B, "Hardship Adjustment Worksheet" to compute the amount to be paid toward retirement of the support debt. In no case should the payment on the support debt be less than $25.00 per month except when 1/24th of the total support debt is already less than $25.

"**HEARING**" means one of the following, depending on the stage in the license suspension action:

(1) NOISL hearing--requested in timely response to the NOISL, to show cause why suspension of the license would not be appropriate; hardship defenses may be asserted
(2) Stay hearing--requested by the licensee after a license is suspended, to move for a stay based on a hardship
(3) 10-day hearing--requested in timely response (within 10 days) to notice the CSED will suspend the license for failure to comply with terms of a payment plan or with conditions imposed by the hearing officer.

"**LICENSE**" means a license, certificate, registration, permit, or any other authorization issued by an agency of the State of Montana granting a person a right or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

"**LICENSEE**" means the person who is the subject of the license suspension action. Where the action is based on a delinquency, the licensee will always be the obligor; where the action is taken for noncompliance with a CSED subpoena, the licensee may be the obligor or any other person subject to a CSED "subpoena" (as defined in this section) in the case. Examples of non-obligor licensees are obligees, alleged fathers, witnesses at hearing, and persons holding requested records.

"**LICENSING AUTHORITY**" means any department, division, board, agency or instrumentality of this state that issues a license. This does not include city-issued business licenses because cities are not instrumentalities of the state. In cases of county-issued licenses, the CSED legal staff should be consulted.

"**LIFTING OF STAY**" means an order by a CSED hearing officer that the existing stay of suspension of the license is no longer appropriate because (1) the licensee has failed to abide by the conditions of the stay, or (2) the basis for the stay no longer applies. When a stay is lifted the license is again automatically suspended.

"**PAYMENT PLAN**" is an Alternative, Financial Hardship, Standard, or custom-language payment plan that meets applicable definitions in this section and MCA 40-5-701, **and** includes the following provisions: acknowledgment of the support debt amount; conditions for default; automatic adjustments in payment distribution; CSED pursuit of payment by other means; and waiver of the obligor's right to (1) service of a NOISL, (2) hearing on the NOISL, and (3) the affirmative defense of the statute of limitations.

"**PERSON**" generally means an individual natural person, not a corporation, partnership or other legal entity. However, some licenses may be issued for use of a particular vehicle or property, for example, the size, weight and load special permits issued by the Department of Transportation. In that case, if the applicant for the permit or owner of the vehicle is an individual natural person it may be possible to suspend that license or permit. See ARM Title 46, Chapter 30, "Administrative License Suspension."

“**RECREATIONAL ACTIVITY**” means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under certain sections of MCA Title 87, chapter 2 (see MCA 40-5-701(11) for citations). Specifically, licenses whose eligibility is subject to suspension by the CSED include Class C trapper’s license, Class C-1 landowner’s trapping license, Class C-2 nonresident trapper’s license, Class C-3 youth trapping license, special licenses (moose, goat, sheep, antelope, grizzly bear, and black bear), drawing for special elk permits, drawing for special antelope licenses, auction of mountain sheep license, auction of Shiras moose license, Class B-10 nonresident big game combination license, Class D-1 nonresident mountain lion license, Class D-2 resident mountain lion license, and Class B-11 nonresident deer combination license.

"**RESOLVED**"/"**RESOLUTION**" means, when used in reference to the NOISL, that the CSED has taken official action in the case following service of the NOISL, and the action is complete until the facts in the case change. Specifically, the NOISL is "resolved" when one of the following occurs: (1) the licensee timely enters into an approved payment plan, pays the support debt in full, or complies with the subpoena, (2) the CSED issues an order suspending the license (for default, or following an NOISL hearing), (3) the CSED issues an order dismissing the NOISL, or (4) the CSED issues an order staying the license suspension based on a hardship.

"**RESULTANT HARDSHIP**" is the hardship a licensee may claim at any time, based on the impact of license suspension on the licensee, the licensee's household, employees, legal dependents, or on other persons, businesses or other entities the licensee serves. This is the hardship specifically provided for in MCA 40-5-710. The burden is on the licensee to prove that the claimed hardship is not merely an inconvenience to the licensee, but is a tangible circumstance that would endanger or otherwise result in irreparable harm to the licensee's household, employees, legal dependents or other persons, businesses or entities served by the licensee. For example, an individual may be licensed to run a Community Home for disabled adults and it may be the only available placement in a rural county. Not much money is made as a result of the license and to suspend the license could result in the need for the state to remove the disabled adults from the home and to find other placements in other communities or counties, which may not be practical or available. See MCA 40-5-710.

"**STANDARD PAYMENT PLAN**" is the payment plan offered by the CSED where the total payment amount is equal to the current support obligation plus at least 1/24 of the support debt. The Standard Payment Plan contains a voluntary withholding authorization, and provides for renegotiation when the obligor's support obligation is modified.

"**STAY OF SUSPENSION**" means an order by a CSED hearing officer that an existing suspension of the license is not appropriate because (1) a "resultant hardship" or "financial hardship" applies, (2) the licensee has entered into an approved payment plan agreement or an approved plan for compliance with a CSED subpoena, or (3) (for an immediate, temporary stay) a hardship claim or a payment or compliance plan is pending and there is a reasonable chance of irreparable harm before the matter can be determined. A stay may be "lifted" (see definition) at any time by order of the CSED.

(Technically, the CSED also "stays" suspension of the license pending the outcome of a requested hearing on the Notice of Intent to Suspend License (NOISL), or upon resolution of the NOISL through an approved payment plan. However, since the CSED has not yet ordered a suspension at either of these points in the process, no formal "stay" order is needed or issued.)

"**SUBPOENA**" means a writ or order issued by the CSED that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control. Examples of CSED subpoenas enforceable by license suspension are genetic testing subpoenas, orders to produce financial information, investigative subpoenas, notice and orders for hearing, and subpoenas and subpoenas duces tecum related to hearings. Orders to withhold, orders to enroll, and orders to seek employment are **not** considered subpoenas for purposes of license suspension.

"**TERMINATION OF SUSPENSION**" means an order by a CSED hearing officer that the suspension of the license is no longer appropriate because the licensee has paid the support debt in full or complied in full, the CSED has closed the case, or for some other reason the licensee is no longer subject to CSED license suspension. (NOTE: When suspension is "stayed" rather than "terminated," the licensee continues to be subject to CSED license suspension.) Termination of a suspension--if applicable--is required even when the suspension is already stayed.

SUPERSEDES

CS 530.2, Notice of Intent to Suspend License, January 15, 1998.

REFERENCES

MCA 40-5-701 et seq.

POLICY

The CSED may initiate license suspension proceedings (1) in cases where the obligor owes a support debt equal to or greater than six months' support obligation or (2) against any individual who fails to comply with a CSED subpoena. This section contains procedures for determining whether license suspension is appropriate, for initiating license suspension action, and for resolving the Notice of Intent to Suspend License (NOISL). Also included in this section are procedures for renewing one-year suspensions of recreational licenses, and procedures for processing requests for relief from default in certain circumstances.

After the NOISL is resolved, procedures in section CS 530.3 for monitoring and adjusting the license suspension status apply.

Definitions of terms used in the remainder of this section are given in section CS 530.1.

In the following procedures **BOLDED CAPITAL LETTERS** at the beginning of a step indicate the following special restrictions:

DELINQUENCY	The step applies **only** when the basis for license suspension is a delinquency.
NONCOMPLIANCE	The step applies **only** when the basis for license suspension is noncompliance with a subpoena.

(Steps without **DELINQUENCY** or **NONCOMPLIANCE** designations apply for either basis of action.)

RECREATIONAL	The step applies **only** when the "license" in question is the person's eligibility for a special permit.
DRIV/PROF/OCC	The step applies **only** for non-recreational drivers,' professional, and occupational licenses.

(Steps without **RECREATIONAL** or **DRIV/PROF/OCC** designations apply for any license type.)

PROCEDURE

Caseworker

1. Initiates license suspension process in step 1a or 1c, depending on basis of action.

a. **[DELINQUENCY]** Upon identifying a support delinquency greater than or equal to six months' support payments, proceeds as follows:

   i. Determines monthly current child support, and if applicable, spousal support amount.

   ii. Divides child support debt by monthly current child support amount and spousal support debt by current spousal support amount.

   iii. If either is equal to or greater than 6, proceeds to next step. If either is expected to reach 6 within next three months, at caseworker's discretion proceeds as appropriate in steps 2 through 8.

Review and Modification Unit Caseworker

b. **[NONCOMPLIANCE]** Identifies case where Review and Modification Unit (RMU) is unable to perform necessary guidelines calculation because licensee has not complied with order to produce financial information issued by RMU. Alerts regional caseworker and provides necessary case facts.

Caseworker

c. **[NONCOMPLIANCE]** Upon directly identifying, or being informed by RMU caseworker of, an individual who has failed to comply with a CSED subpoena, determines whether license suspension would be appropriate to enforce compliance. Factors affecting determination may include
   - whether individual is likely to comply (without license suspension incentive) if given additional opportunity
   - whether compliance is necessary to proceed to next step in case
   - whether individual has shown pattern of noncompliance with CSED requirements and appears likely to continue.

   If license suspension is appropriate based on noncompliance, follows applicable procedures in this section.

2. Identifies any other license suspension actions already begun against same licensee in other cases or in this case.

   a. Coordinates--**but does not combine**--multiple license suspension actions by (1) alerting OALJ of multiple actions (note securely attached to initial documents sent to OALJ is sufficient) and (2) where possible, issuing multiple notices or multiple motions at the same time.

   b. Except as allowed in step 3e, continues to pursue each action against a particular licensee regardless of status of other actions. Especially where actions are occurring in **different cases**, the CSED should not drop one action simply because the person's license is "already suspended" by another. If the existing suspension is stayed or terminated, the net effect on the person's license will depend on whether a suspension from any other action is still in effect.

3. Determines if any of the following considerations applies, and takes action as indicated:

   a. **[DELINQUENCY]** Licensee payment pattern indicates a likelihood of continued adequate regular payments, including amounts toward the support debt. These could be voluntary, income withholding, or other. **Continues with existing collection efforts; does not initiate license suspension activities.**

      NOTE: Initiating License Suspension In Cases Where Employer Identified. CSED policy allows initiation of license suspension in cases where an employer is identified **only if** (1) ordered withholding is not producing an acceptable level of payments (reported employment is part-time, seasonal, or short-duration), or (2) the CSED does not have jurisdiction to order withholding.

   b. **[DELINQUENCY]** Licensee has no reliable source of income and is not expected to have a reliable source of income in the foreseeable future, AND the lack of income is involuntary or beyond the licensee's control. **Continues to monitor case for income source; does not initiate license suspension activities.**

   c. **[DELINQUENCY]** CSED is currently litigating the amount of the support debt either in a court or administrative proceeding. **Waits for outcome of litigation, repeats step 1, then proceeds to step 4.**

   d. **[DELINQUENCY]** Licensee has filed a bankruptcy petition. **Consults with CSED regional legal staff to determine whether license suspension is available; if so, proceeds with step 4.**

   e. Any other facts indicating that license suspension would not be effective as an enforcement tool, or would not be appropriate in the particular situation. **Reviews facts with supervisor to determine if license suspension activities should be initiated or deferred.**

      EXAMPLE 1: A licensee is suffering from a terminal illness, and suspension of his or her professional license would lead to loss of employment and, as a consequence, loss of health insurance benefits.

      EXAMPLE 2: The CSED has already taken license suspension action in the case against the same licensee for a previous delinquency or noncompliance, and there is a suspension, stay, or payment plan in effect. A new action, although legally supportable, would not produce any additional enforcement benefit at this time.

      EXAMPLE 3: The licensee is a paying obligor, the basis for a suspension action is noncompliance, and in the caseworker's discretion a suspension action may have a detrimental effect on ongoing enforcement in the case.

4. Identifies licenses or eligibility available for suspension, using procedures in steps 4a and 4b below.

   a. **[DRIV/PROF/OCC]** Identifies driver's, professional, or occupational licenses held by licensee. If necessary consults CSED regional office's license list to determine license(s) held, and name and address of licensing authority(ies). For licenses identified or still in question proceeds to step 5.

      NOTE 1: Related Licenses. Some specific types of licenses are closely related to other types: a licensee having one type is very likely to also have the other. (For example, in Montana a person must have a liquor license in order to obtain a gambling license. Suspending only the liquor license creates extra work for the licensing authority, which must explain to the licensee why the gambling license is now also void even though the CSED did not suspend it.) The caseworker should be aware of these connections as much as possible, and should check for and act on "related" licenses whenever indicated.

      NOTE 2: Follow-Through Required for Licenses Suspended by Licensing Authority. It is important to complete all appropriate CSED license suspension actions regardless of whether the licensing authority has--independently--temporarily suspended the license. If and when the licensing authority reinstates a license it has previously suspended, it will be to the CSED's advantage to have its suspension order already in place, to continue the suspension.

      NOTE 3: Licenses to Practice Law. If the licensee holds an attorney's license the caseworker should consult with the CSED staff attorney to consider initiation of appropriate district court procedures against that license.

   b. **[RECREATIONAL]** Determines in steps b(I) and (ii) below whether licensee is **both likely and eligible** to apply for one or more special permits issued by Montana Department of Fish Wildlife and Parks (FWP). If so, proceeds to step 7 for recreational licenses; if not, proceeds according to step 4a only.

      i. For purposes of this determination, the licensee is considered **likely** to apply if
         - the licensee applied for any over-the-counter or special-permit recreational licenses in past years (FWP lists are available for this purpose in the regional office), and there is no reason to believe the licensee has lost interest in the recreational activity, OR
         - certain case information--for example, telephone conversations with a case participant or other person--suggests the licensee is particularly interested in the recreational activities for which over-the-counter and special permits are issued.

NOTE: Caseworker Discretion Required. The following special considerations apply to actions against recreational licenses:

(1) At this time FWP implements CSED suspensions of eligibility by performing, for each special permit drawing, a manual comparison of the CSED list of ineligible licensees and the FWP list of applicants. **It is the CSED's policy to minimize the burden on FWP** by limiting the list of ineligible licensees to those against whom suspension actions would be effective. Where a licensee is only remotely likely to apply for a special permit, the caseworker must determine whether the costs of continuing to pursue suspension in this area are justified by realistic benefits.

(2) Actions against recreational licenses carry harsher consequences than actions against other licenses. Eligibility, once suspended, cannot be returned until the next license year. For this reason the caseworker must pay even greater attention to accuracy, appropriateness, and enforcement value when determining whether to proceed against a recreational license.

ii. For purposes of this determination, the licensee is considered **eligible** to apply for a particular permit in the absence of any readily available FWP data showing
- the licensee's eligibility for that permit is currently suspended on the basis of a fish and game violation, or
- the licensee is not eligible for that permit because the licensee was successful in a past drawing for the same permit.

FWP lists are available for this purpose in the regional office.

5. **[DRIV/PROF/OCC]** Except where the CSED has direct electronic access to the licensing authority's records, contacts licensing authority to verify license is held by
   - mailing form CS-530.2A, Inquiry to Licensing Authority; or,
   - if facts of case justify (action is urgent, or existence of license is fairly certain), telephoning licensing authority to obtain necessary information requested in letter.

   A follow-up call to the licensing authority may be necessary if the written response indicates the authority has additional locate, asset, or income information or to clarify information provided.

6. **[DRIV/PROF/OCC]** Reviews information obtained from licensing authority. Determines if information leads to other enforcement options (see examples below). If so, proceeds with other options as appropriate. Proceeds to step 7.

   EXAMPLE 1: A livestock dealer/broker sells cattle through certain stockyards. The CSED can obtain writs of execution or issue orders to withhold to those stockyards.

   EXAMPLE 2: A licensee has a gambling operator's license and owns electronic poker machines. The licensee does not run a bar but leases the machines to bars. The

Department of Revenue knows who the licensee has leased the machines to. The CSED can obtain a writ of execution or issue an order to withhold to the lessee (bar owner) to intercept the lease payments due to the licensee gambling machine owner.

EXAMPLE 3: A licensee has farm equipment with a special weight/size/load of some type. The CSED can obtain a description of the equipment and contact the Secretary of State's Office to find out whether there are liens against the property. If there are no liens, the CSED can proceed with a writ of execution to seize and sell.

7. Determines whether it is appropriate to send form CS-530.2B, License Suspension Warning Letter ("Important Information--Please Read"). If so, selects basis for suspension action (delinquency, noncompliance, or both), prepares and sends letter, enclosing form CS-501.1A, Debt Computation Worksheet in delinquency cases, and proceeds to step 8. If not, proceeds to step 9.

   NOTE: Use of Warning Letter. It is appropriate to send the warning letter when there is no reason to fear that the licensee would flee or hide assets, or if the letter is likely to encourage the licensee to enter into a payment plan or comply with the subpoena without the need for a formal notice.

8. **For each basis of action** listed in License Suspension Warning Letter, proceeds as in 8a, 8b, or 8c for that basis of action. For any basis not satisfied in 8a, 8b, or 8c, proceeds to step 9.

   a. If licensee pays debt in full or complies with subpoena, takes no further license suspension action.
   b. **[DELINQUENCY]** If licensee enters into payment plan, proceeds as in step 15.
   c. **[NONCOMPLIANCE]** If licensee makes good-faith arrangements to comply with subpoena as soon as external factors allow (for example, cooperates with rescheduling of genetic testing), monitors for future actual compliance and, if obtained, takes no further license suspension action.

9. If License Suspension Warning Letter is not appropriate, or if satisfactory response is not received, prepares Notice of Intent to Suspend License (NOISL) package consisting of

   - **[DELINQUENCY]** Notice of Intent to Suspend License, form CS-530.2C, alleging delinquency;
   - **[DELINQUENCY]** Debt Computation Worksheet, form CS-501.1A;
   - **[DELINQUENCY]** Financial Affidavit, form CS-404.6A;
   - **[NONCOMPLIANCE]** Notice of Intent to Suspend License, form CS-530.2C, alleging noncompliance(s);
   - Request for License Suspension Hearing, form CS-530.2D;
   - if certified mail may not be effective, form CS-401.3C, Sheriff's Praecipe, or cover letter to private process server.

IMPORTANT: Two separate notices are required in cases where the CSED is alleging both a delinquency and a noncompliance. However, a single NOISL may contain multiple allegations of noncompliance.

10. Serves and proceeds to resolve notice(s) as follows:

a. Secures service of notice package by
   - personal service, through sheriff or civil process server, or
   - certified mail, return receipt requested (specifies "restricted delivery" option if useful in obtaining service on proper person in household).

If service cannot be obtained by any of above methods, attempts to obtain updated address for service on licensee. If attempt fails, checks existing support or paternity order for basis for deemed service of process with respect to licensee. If found, completes form CS-405.1B, Efforts to Locate for Service, for case file; sends notice package by regular mail to licensee's last known address, and proceeds as if service had been obtained. If not, monitors for opportunity to obtain service, and takes no further action until licensee is successfully served.

Monitors for timely response according to periods given in step 20 for type of service.

b. If **additional license** is discovered after notice package is served and before NOISL is resolved, proceeds against additional license as appropriate by
   - amending the NOISL to include the additional license, or
   - issuing a separate NOISL for the additional license only, or

     NOTE: Coordination Required. This option requires special coordination at the resolution stage (steps 14, 18, and 23--payment plan, MOLSA, and hearing) so that a single order can be entered that lists all of the licenses **and** satisfies all due process requirements.

   - including the additional license in any payment plan obtained in step 15 (the signed payment plan takes the place of the NOISL for the additional license).

c. If **new basis** for suspension arises at any time after notice package is served, and if new basis is determined to be appropriate for action at that time (steps 1 and 3), then, except as noted below, initiates separate action for new delinquency or noncompliance beginning at step 7.

EXCEPTION 1: **[NONCOMPLIANCE]** At caseworker's option, if new basis is noncompliance, and NOISL for noncompliance has been served and is not yet resolved, amends existing NOISL to include new noncompliance.

EXCEPTION 2: **[DELINQUENCY]** At caseworker's option, if new basis is additional six months' delinquency, and NOISL for delinquency has been served and is not yet resolved, amends existing NOISL to allege new total debt amount.

d. For **EACH NOISL** issued in step 9, separately follows remaining procedures beginning with step 11.

11. **[DELINQUENCY]** if employer or payor is identified at any time after NOISL is served but before NOISL is resolved, proceeds with income withholding actions as applicable in sections 510.1, 510.3, 510.4, 510.10, 510.11, and 510.15, coordinating procedures in this section as follows:

    a. Where useful in management of the case, substitutes signed Standard or Financial Hardship Payment Plan Agreement (but **not** Alternative Payment Plan Agreement) for Notice of Intent to Withhold Income, or Supplemental Notice of Intent to Withhold, as applicable. (Note that the payment plan authorizes income withholding for the agreed amounts for only as long as the plan is in effect; see step 11e for procedures to renew withholding when plan expires.) **See NOTE and CAUTION after step 11e.**

    b. If license suspension action leads to hearing, requests hearing officer require continued participation in any CSED-ordered income withholding as a condition of any stay resulting from hearing. If income withholding has not been ordered, requests hearing officer seek licensee's voluntary agreement to income withholding for any payment plan imposed at hearing where amounts in payment plan meet Montana income withholding requirements. (If the licensee refuses to agree to income withholding in this situation the CSED cannot compel it within the license suspension process.) For voluntary withholding obtained at hearing, see CAUTION regarding time frames at the end of this step.

    c. Where income withholding is being implemented in this step (11), and the licensee defaults on the NOISL, the caseworker should consider whether suspension of the license would be detrimental to continued income withholding. If so, the CSED may, in its discretion, choose not to pursue the default at this time but allow the NOISL to remain in effect. The CSED then retains the ability to take license suspension default action at any time in the future. (Future default action may be appropriate, for example, if the licensee discontinues employment.) **If default action is postponed for any significant length of time (more than 30 days) after the end of the response period, the caseworker must use a Notice of Default (step 17) to re-initiate the default process.**

    d. At caseworker's discretion, dismisses Notice of Intent to Suspend License as in step 14g if dismissal will be beneficial to overall enforcement of case. Factors that may further affect the decision to dismiss are
        (1) Whether income withholding is implemented for the total amount of debt alleged in the NOISL before the license suspension action is resolved.
        (2) Whether there is convincing evidence the licensee will cooperate with income withholding--that is, will maintain continuous employment, and will timely notify the CSED of any changes in employer.

e. If income withholding is implemented in this step (11) based solely on voluntary payment plan or on agreement at license suspension hearing, proceeds (in addition to actions taken in step 15) to monitor
   - declining balance of debt acknowledged in Standard Payment Plan (or equivalent imposed plan), or
   - time left on hardship allowed in Financial Hardship Payment Plan (or equivalent imposed plan).

   Three months before payment plan would normally expire, contacts licensee to arrange for continued withholding. Takes action in section CS 510.3 or 510.4 to gain authority to continue income withholding for current support and any additional support debt when payment plan expires.

NOTE: Use of Payment Plan as Basis for Income Withholding. Under a Standard or Financial Hardship Payment Plan, or a payment plan imposed at hearing in conjunction with an oral agreement to withholding, the licensee agrees the CSED may order income withholding for the monthly amount and for the total support debt named in the plan, without further notice to the licensee. In this way the payment plan operates as a Voluntary Withholding Authorization, except that when the payment plan expires, the CSED may not continue income withholding unless there is another basis for withholding that is already in place (immediate withholding, adjudicated withholding notice, or voluntary authorization). The monthly amount in the plan is calculated as for a regular withholding action (current support plus a payment on the support debt of 1/24th, 25%, or the hardship amount), and payments received under withholding are credited toward the amount due under the payment plan. Where payments actually withheld are less than the payment plan amount (because of Federal Consumer Credit Protection Act limits, a low level of employment, or both), caseworker discretion applies in determining whether the licensee substantially complies with the plan or is in default of it (see procedures for default on payment plan in section CS 530.3). Income withholding status does not, in itself, constitute compliance with the payment plan.

CAUTION: Federal and state time frames for income withholding apply regardless of payment plan status. When a Standard or Financial Hardship Payment Plan Agreement or an agreement obtained at a license suspension hearing is being used in place of a required NOI or SNOI, the payment plan or order from hearing must be entered within 15 days after the employer is located (or, if applicable, after a letter of delinquency is issued). Also, the resulting withholding order must be issued within 15 days after the date of entry of the payment plan or order from hearing.

12. If licensee timely takes appropriate action to cure issue alleged in NOISL, prepares form CS-530.2F, Motion and Order for License Suspension Action (MOLSA). Ensures Certificate of Mailing lists name and address of licensee and licensee's attorney; ensures list of regular copies includes names of other parent or custodian, parent or custodian's attorney, other state if applicable, and CSED caseworker. Proceeds as follows:

a. **[DELINQUENCY]** If licensee timely pays noticed support debt in full, requests in MOLSA that debt be declared paid in full. Retains copy of MOLSA in case file and transmits original to OALJ; also attaches updated Debt Computation Worksheet. Takes no further action with respect to delinquency NOISL.

b. **[NONCOMPLIANCE]** If licensee timely (with respect to NOISL or later date set in step 14f) complies with subpoena, requests in MOLSA that failure to comply be declared cured. Retains copy of MOLSA in case file and transmits original to OALJ. Takes no further action with respect to noncompliance NOISL.

NOTE: Multiple Non-Compliance Issues Treated as One. If the NOISL alleges failure to comply with two or more subpoenas containing different commands, the caseworker should not issue a MOLSA under 12b above until the licensee has satisfied all of the subpoenas.

13. If licensee timely contacts CSED or timely requests hearing, proceeds to step 14. If not, skips to step 18.

14. Responds to timely contact or timely request for hearing from licensee by taking one or more of following actions as appropriate:

a. Discussion of Facts and Options. Contacts (or is contacted by) licensee to discuss options following Notice of Intent to Suspend License. Discusses one or more of following topics, as applicable. If after discussion, licensee timely cures the issue alleged in NOISL, returns to step 12.

(1) Licensee's reasons for disputing license suspension, including those stated on the Request for License Suspension Hearing.

(2) **[DELINQUENCY]** Availability and benefits of payment plan agreement.

NOTE: Option for Use of Assets in Place of (or to Determine) Payment Plan. In certain rare situations where the licensee holds substantial assets that are not reasonably available to the CSED, the CSED may choose not to offer one of the payment plans described in step 14c, 14d, or 14e below, but to request the licensee make use of the assets to pay the noticed debt in full. For example, the licensee may hold assets that are outside the CSED's jurisdiction (such as property on a Reservation), or that are difficult for the CSED to convert to cash (such as a liquor license). If the licensee can liquidate these assets, or use them as collateral to obtain a loan for cash, the CSED may wish to pursue this option instead of accepting smaller payments under an extended payment plan. If the licensee demands a payment plan, and will not make any attempt to use the assets as described above to obtain and pay the full amount, the CSED may choose to offer a plan that requires the entire amount be paid within a few payments. The licensee may dispute any CSED request to liquidate assets or pursue a loan, or any payment plan proposed under this option, at a hearing requested in response to the notice. **In all situations of this kind, the caseworker should consult the CSED staff attorney before declining to offer a payment plan from 14c through 14e.**

(3) **[RECREATIONAL]** For recreational licenses, special consequences of failing to timely resolve notice. Specifically, if the licensee's eligibility is suspended, the suspension will be effective for the duration of the first full cycle of special drawings that occurs after the suspension date, regardless of any action taken by the licensee before or during that cycle. (Of course, any suspension based on a default may be set aside at any time if the conditions in step 27b apply.) The mandatory suspension period does not apply to other (non-recreational) licenses, which may be reinstated as soon as the licensee takes appropriate action.

(4) **[NONCOMPLIANCE]** Availability of extended time for compliance, if applicable (see step 14f).

b. Verification of Debt or Noncompliance. If licensee disputes amount of support debt or facts of noncompliance alleged in NOISL, verifies payments, case facts, or other information.

c. **[DELINQUENCY]** Standard Payment Plan. If licensee agrees support debt is greater than six months' support payments, and wishes to enter into regular payment plan, prepares form CS-530.2E, Standard Payment Plan Agreement. Specifies licenses to which agreement applies (document must include all licenses for which licensee has been noticed; if licensee agrees, document may include unnoticed licenses as well). Ensures Certificate of Mailing lists name and address of licensee and licensee's attorney; ensures list of regular copies includes names of other parent or custodian, parent or custodian's attorney, other state if applicable, and CSED caseworker. Prepares and attaches Debt Computation Worksheet, and sends by regular mail to licensee.

NOTE 1: Acknowledgment of Additional Debt Not Required. If the licensee wishes to enter into a payment plan agreement, and additional support debt has accrued since the date of the notice, the caseworker should attempt to obtain the licensee's agreement to the total amount. However, if the licensee will not agree to the additional amount, the amount specified in the notice--or shown to be correct after considering proof of payments and other information--should be used. The caseworker should not request a default on the NOISL solely because the licensee will not sign a payment plan that includes support debt accrued subsequent to the date of the NOISL.

NOTE 2: Payment Date Adjustable. If the licensee wishes to enter into a payment plan agreement, but is prevented from doing so by the language requiring payment by the 15th of every month, the caseworker may revise the payment plan document to specify a different monthly payment date for the licensee. This revision should be available only for good reason, however, as payments delayed until the second half of the month can contribute to "date of collection" problems in system accounting.

d. **[DELINQUENCY]** Financial Hardship Payment Plan. If licensee agrees support debt is greater than six months' support payments, but alleges regular payment plan is not affordable, obtains completed, signed and notarized form CS-404.6A, Financial Affidavit. Based on information contained in financial affidavit and information available from regular CSED sources, calculates amount to be paid toward support debt using form CS-510.5B, Hardship Adjustment Worksheet. Prepares and mails form CS-530.2E, Financial Hardship Payment Plan Agreement, with an attached Debt Computation Worksheet by regular mail to licensee. (See special instructions in step 14c for preparing agreement document; see NOTEs following step 14c in determining debt amount and payment date to be included in agreement.)

NOTE 1: Failure to Provide Financial Affidavit. If the licensee fails or refuses to provide information contained in the financial affidavit when specifically requested to do so by the caseworker, the refusal may be deemed a refusal to enter into an approved payment plan, and default procedures beginning with step 17 would apply.

NOTE 2: Duration of Financial Hardship Agreement. In general, the hardship adjustment period will not exceed two years. If the payment plan is being used to take income withholding action as in step 11, the hardship adjustment period generally will not exceed one year (the standard hardship adjustment period for income withholding).

e. **[DELINQUENCY]** Alternative Payment Plan. If upon receiving proposed Financial Hardship Payment Plan (step 14d) licensee alleges the proposed monthly amount is not affordable given available monthly income, **and licensee produces convincing evidence of this claim,** discusses alternative payment plan with licensee. Discussion should include relevant details of licensee's financial situation, and any non-monetary commitments CSED may require of licensee. Explains that if income withholding applies (see NOTE below), amounts withheld--as stated in separate withholding notice and any adjustments allowed by law--may be higher than payment plan amounts. Determines suitable monthly payment amount and any other special terms of agreement, and obtains supervisor's approval. Prepares and mails form CS-530.2E, Alternative Payment Plan Agreement with an attached Debt Computation Worksheet by regular mail to licensee. (See special instructions in step 14c for preparing agreement document; see NOTEs following step 14c in determining debt amount and payment date to be included in agreement.)

NOTE 1: Alternative Payment Plan Amounts Not Subject to Income Withholding

Minimums. The CSED is required by law, when ordering income withholding, to order amounts that are at least equal to current support. License suspension, however, is governed by separate requirements, and payment plan amounts may be approved for less than current support. When this occurs, any separately ordered income withholding will be higher.

NOTE 2: Alternative Payment Plan for Unusual Situations Only. An Alternative Payment Plan may be proposed only in highly unusual situations where it is clear the licensee could not meet the monthly payments of a Financial Hardship Payment Plan, where no other enforcement tools are available for collecting support, and where it is likely the licensee will abide by the terms of the agreement. The agreed monthly payment may be any amount up to the amount calculated for financial hardship; in extreme situations the amount may be even less than current support. The duration of the agreement should be limited to the time necessary for the licensee to improve his payment position, typically 6 months or less. When indicated, the agreement should include additional terms requiring the licensee to demonstrate a good-faith effort to work with the CSED; for example, the agreement may require the licensee to contact the caseworker on a regular basis, to report on progress or confirm payment intentions.

f. **[NONCOMPLIANCE]** Extended Period for Compliance. Where licensee agrees--and there is reason to believe licensee truly intends--to comply with CSED subpoena, but external factors will not allow compliance within NOISL response period, negotiates plan for compliance at earliest practical time, including specific actions and dates. Prepares and sends to licensee form CS-530.2H, License Suspension Letter Confirming Compliance Agreement, and monitors for compliance. If individual complies, proceeds as in step 12b. If not, proceeds to step 17a; mandatory Notice of Default applies.

g. Dismissal of Notice. If contact with licensee reveals any of the following situations applies, dismisses Notice of Intent to Suspend License by preparing and forwarding to OALJ form CS-401.3F, Motion and Order to Dismiss Administrative Notice:

(1) The identity of the person served is verified not to be the licensee.
(2) **[DELINQUENCY]** The licensee provides proof that the support debt did not equal or exceed six months' support at the time the notice was served.
(3) **[DELINQUENCY]** At the caseworker's discretion in step 11c, there is good reason to drop the action based on the licensee's expected full cooperation with income withholding and associated payment of the support debt.
(4) **[NONCOMPLIANCE]** The licensee provides proof that he or she had already complied with the subpoena when the notice was served, or that the CSED should not have issued the subpoena.
(5) One or more of the conditions in steps 3b through 3e apply, and the CSED determines license suspension is not appropriate or would not be effective.

15. **[DELINQUENCY]** If payment plan agreement is signed and returned by licensee, prepares stuffers, makes file copy of agreement, and transmits original with stuffers and copy of Debt Computation Worksheet (and, for Financial Hardship Payment Plan, copy of hardship adjustment worksheet) to OALJ for review and (if appropriate) approval. Diaries for approval and monitors for compliance in the interim. Upon approval (step 19), sets any ticklers needed to monitor compliance with payment plan. Also, if payment plan is being used in step 11 to initiate or modify income withholding, performs SEARCHS processing as if for VWA. Proceeds to section CS 530.3.

16. If Request for License Suspension Hearing is received in regional office, immediately faxes to OALJ, makes copy for case file, and sends original to OALJ with evidence of date received. Skips to step 21.

17. If licensee has timely contacted caseworker in person, by telephone, or in writing following service of NOISL, but by end of response period (or later date set by caseworker in step 14f) has not paid the noticed debt in full, signed a payment plan agreement, complied with the subpoena, or requested a hearing, takes action in 17a or 17b below, depending on circumstances of case:

    a. If regional policy allows and if, in the discretion of the caseworker, further formal contact would prompt the licensee to request a hearing, enter into a payment plan, pay the support debt in full, or comply with the subpoena, prepares and mails form CS-405.4, Notice of Default, adjusting language for license suspension situation. Sets SEARCHS tickler for 10 working days plus an additional three calendar days. If licensee timely requests a hearing, enters into a payment plan, pays the debt in full, or complies with the subpoena, proceeds to appropriate step following service of NOISL. If not, proceeds to step 18.

    b. If regional policy or caseworker discretion precludes the use of a Notice of Default in this case, proceeds to step 18.

18. If by end of response period (or later date set by caseworker) licensee has not paid noticed debt in full, signed payment plan agreement, complied with subpoena, or requested hearing, prepares form CS-530.2F, Motion and Order for License Suspension Action, requesting license suspension based on default. If action is based on delinquency, attaches copy of Debt Computation Worksheet from original notice. Ensures Certificate of Mailing lists name and address of licensee and licensee's attorney; ensures list of regular copies includes names of other parent or custodian, parent or custodian's attorney, other state if applicable, and CSED caseworker. Prepares stuffers, with additional stuffer showing name and address of licensing authority, and sends package to OALJ. Retains copy in case file and diaries return. Upon entry of decision and order suspending license (step 19), proceeds to step 27.

    NOTE: **[DELINQUENCY]** Less Than Full Payment of Support Debt. If no payment plan agreement has been received from the licensee, and a payment was received after the date of service of the Notice of Intent to Suspend License, even though it reduced the support debt alleged in the notice to less than six months' support payments, suspension is still appropriate, and the CSED will proceed with a default.

Hearing Officer

19. Upon receipt of Motion and Order for License Suspension Action or signed payment plan agreement, reviews document and enters decision and order as appropriate. Skips to step 25.

Office of the Administrative Law Judge (OALJ)

20. Upon receipt of Request for License Suspension Hearing from licensee, determines date of service of Notice of Intent to Suspend License, and ending dates for timely response. **"Timely" response** is response received 60 calendar days or fewer after NOISL date of personal service; for certified mail, timely response is response received 63 calendar days or fewer after date of mailing, or 60 days or fewer after date licensee signs return receipt, whichever allows for later response; for regular mail, timely response is response received 63 calendar days or fewer after date of mailing.

    a. If Request for License Suspension Hearing was timely received, or was received untimely and decision and order suspending license for default has not been issued, grants hearing and proceeds to step 22.

       NOTE: Suspension Stayed Pending Hearing. Suspension of the license in the case is automatically stayed pending the outcome of a timely requested hearing; an order specifically entering a stay in this situation is not required. (Note that in the case of a hearing scheduled for after the date of the CSED's report to FWP (step 28), the licensee will be eligible for that year's drawings even if the NOISL was served before the report to FWP was run; the decision and order from the hearing will affect the next year's eligibility.)

    b. If Request for License Suspension Hearing was received untimely and decision and order suspending license for default has been issued, prepares order denying hearing for untimeliness. Mails copies to licensee, licensee's attorney, and CSED caseworker, and files original.

       NOTE: Post-Suspension Request Treated as Request for Stay. If in the discretion of the hearing officer the Request for License Suspension Hearing was intended as an application for "after the fact" relief from the suspension--that is, as a request for a stay, or for a set-aside of the default--the hearing officer may inform the licensee the request will be treated as a request for a stay or set-aside hearing unless the licensee withdraws it. Procedures for granting and conducting a license suspension stay or set-aside hearing are given in section CS 530.3.

NOTE: **[DELINQUENCY]** Hearing Declined in Favor of Payment Plan. If the OALJ receives and approves a signed payment plan agreement in a case where a hearing is requested, the OALJ prepares and sends a letter to the requesting party explaining that a hearing is unnecessary. If a date has been set for the requested hearing, the OALJ dismisses the hearing date. (A note from the caseworker reminding the OALJ a hearing has been requested may be helpful.)

Caseworker

21. Upon being informed by OALJ of license suspension hearing (step 22), prepares list of witnesses with names and telephone numbers. Checks SEARCHS records to see if any telephone numbers should be protected; if so, makes arrangements with individual to provide alternate number for contact purposes (alternate number may be different from number to be used for hearing).

    Determines exhibits due date; prepares exhibits; makes copies of exhibits and of witness and exhibits list for all participants plus case file; sends to participants, with originals to OALJ, by due date. Arranges for witnesses' appearance at hearing.

    Prepares testimony for hearing. If in previous conversations licensee has indicated intent to claim **financial or resultant hardship**, prepares additional testimony, exhibits, etc. to rebut or support hardship as appropriate. If licensee introduces hardship claim at hearing without prior indication, determines whether additional time is necessary to prepare for hardship case; if so, moves for continuance to prepare case as in section CS 530.3 for stay hearing.

    NOTE: Option for Scheduling Noncompliance Hearing Before Delinquency Hearing. If a hearing is requested on a delinquency NOISL, and a noncompliance NOISL has been served against the same licensee in the same case **and** the caseworker believes it would be beneficial to resolve the noncompliance issue before the delinquency issue (for example, if the subpoenaed information is needed to prepare for the delinquency hearing), the caseworker may request that any noncompliance hearing be scheduled ahead of the delinquency hearing.

OALJ

22. Prepares and issues Notice and Order for Hearing, scheduling date and time for hearing (see NOTE after step 21). Copies hearing notice and order, files original, and mails copies with attached hearing instructions to licensee, licensee's attorney, and caseworker.

Hearing Officer

23. Conducts administrative hearing as follows:

    a. If licensee appears for hearing,
        - in all cases, determines whether allegations in NOISL are true (licensee owes support debt in amount greater than or equal to six months' support obligation;

licensee has not complied with CSED subpoena).

- at licensee's request, also determines whether financial or resultant hardship applies; if applicable, determines appropriate payment or compliance plan.

Issues decision and order giving results of above determinations and, if applicable, imposing payment or compliance plan.

NOTE: Hearing Issues. In most hearings the delinquency issues are limited to whether a support debt exists, and if so, the amount of the support debt or support obligation, and whether the licensee has entered into a payment plan. Noncompliance issues are mainly whether the licensee has complied with a CSED subpoena, or whether the licensee was been afforded reasonable opportunity to comply. If the licensee has raised an issue of financial or resultant hardship, the hearing officer may hear testimony and arguments, including testimony and information from the other parent or the custodian, and receive other evidence of the licensee's hardship claim.

b. If licensee does not appear for hearing, determines whether licensee owes support debt in amount greater than or equal to six months' support obligation, or has failed to comply with CSED subpoena. (Considers any hardship defenses or requests for payment plan by licensee to be without merit.) Issues decision and order based on delinquency or noncompliance determination only.

OALJ

24. Upon entry of license suspension hearing decision and order, completes Certificate of Mailing listing name and address of licensee and licensee's attorney. (Checks SEARCHS for any reason to protect address of licensee--if found, removes address before printing decision and order.) Elsewhere in document lists names of individuals to receive regular copies. Obtains signature of hearing officer on final decision and order. If necessary for use in step 26, obtains name and address of licensing authority from caseworker.

25. For decision and order entered in step 19 or step 23, copies complete document containing signed decision and order; files original; and mails copies to individuals listed in Certificate of Mailing or shown as receiving regular copies.

26. Determines status of licensee's license with licensing authority and proceeds as in 26a or 26b below.

    a. **[DRIV/PROF/OCC]** If decision and order changes license status with licensing authority, prepares appropriate version of form CS-530.2G, Notice to Licensing Authority (see below), and obtains signature of hearing officer. Mails certified copy to licensing authority, certified mail, return receipt requested, and files original.

    The "appropriate version" of the Notice to Licensing Authority in this step will be either the version suspending the license or the version lifting the stay of license suspension (other versions apply in section CS 530.3). The version lifting the stay applies only if, **in another case,** the licensee's license was previously suspended and then the suspension was stayed with the licensing authority.

NOTE: Notice to Licensing Authority Not Necessarily Same as Decision and Order. Because a CSED decision and order applies only to the particular case, or because in certain situations a CSED decision and order merely preserves the existing license status in the case, the corresponding notice (or lack of notice) to the licensing authority may appear not to reflect the intention of the decision and order. See section CS 530.3 for further explanation.

b. **[RECREATIONAL]** If licensee's eligibility for recreational licenses is being suspended, enters event for suspended FWP eligibility, identifying licensee (by role in case) and applicable license year. (For licensees who are not participants in case in which action is being brought, maintains manual list, and adds to list submitted in step 28 at appropriate time.)

NOTE: Termination Based on Default Set-Aside. In the rare event that suspension of the licensee's eligibility is terminated (that is, eligibility is reinstated) because the suspension was the result of a default that is later set aside (see step 27b), it is the responsibility of the OALJ to arrange for the SEARCHS event in step 26b above to be deleted.

Caseworker

27. If action in step 19 or 23 results in license suspension, proceeds in steps 27a through 27c as applicable.

a. Enters appropriate SEARCHS case note and, at caseworker's discretion, adds message to CSU screen saying license is suspended and any call from licensee should be transferred to caseworker. (Removes message when all suspensions in case are stayed or terminated, or when direct conversation with licensee no longer needed.)

b. Where the suspension is based on a default on the NOISL, and the licensee contacts the CSED claiming good reason to set aside the default (or making any equivalent comment or assertion), consults CSED regional legal staff and, if appropriate, and except as noted below, refers licensee to OALJ for determination. Default orders on CSED notices are generally "set aside" only for reasons of mistake, inadvertence, surprise, or excusable neglect. The most common examples of these reasons include (1) the licensee did not receive the notice, (2) the licensee received the notice but an extraordinary intervening event, or the physical or mental incapacity of the licensee, prevented a timely response, or (3) the licensee responded but the CSED did not hear of the response. **Note that the relief in this step applies to recreational as well as non-recreational licenses. However, if the set-aside is too late to reinstate the licensee's eligibility for**

recreational licenses in the next drawing cycle (see steps 28 and 29), the relief may be of no practical value.

EXCEPTION: If there is clear evidence of reason (1) or (3) above, the caseworker may elect to initiate the set-aside action through a MOLSA, according to the procedures in section 530.3.)

c. **[DRIV/PROF/OCC]** Sets tickler for 60 days to send reminder letter to licensee.

CSED Central Office

28. **[RECREATIONAL]** At appropriate time each year prepares list of licensees ineligible for special drawings held that year, obtains any manual additions from OALJ, and submits list to FWP for match with applications received. List should contain all licensees for whom events were entered in step 26b, with any duplications removed. SPECIAL TIMING CONSIDERATIONS: To ensure list includes maximum number of suspension events, report should be run on latest practical date that will still allow submission to FWP by specified due date.

Department of Fish, Wildlife and Parks

29. **[RECREATIONAL]** Upon receipt each year of list of ineligible licensees from CSED, for each special drawing in that year matches licensees on CSED list with applications received for drawing. For each match found, removes name from eligibility and processes refund as applicable.

Caseworker

30. **[RECREATIONAL]** If licensee was included in list submitted in step 28, proceeds as applicable in steps 30a and 30b below.

    a. On or about September 1 of the year for which eligibility was suspended, reviews case to determine whether licensee has taken appropriate actions relating to basis of suspension (paid noticed debt in full, entered into payment plan, obtained stay at hearing, or complied with subpoena). If so, and no new basis for action has arisen, takes no further action in this section (if licensee is subject to stay or payment plan, procedures in section 530.3 still apply).

    b. If licensee has not taken appropriate action, or if new basis for suspension action has arisen, follows procedures in this section beginning with step 1 to determine whether to initiate suspension action against next year's eligibility.

SUPERSEDES

CS 530.3, Changes in Suspension Status, February 2, 2001.

REFERENCES

MCA 40-5-701 et seq.

DEFINITIONS

Definitions for the terms used in this section are given in section CS 530.1.

POLICY

After the Notice of Intent to Suspend License (NOISL) is initially resolved under the procedures in section CS 530.2, the CSED may take further action as follows:

(1) Stay a license suspension if the suspension is creating a significant hardship, or if the licensee enters into an approved payment plan.
(2) Suspend a license if the licensee fails to abide by the terms of a payment plan or by the conditions of a stay. (To suspend a license where a stay is in effect, the CSED must lift the stay.)
(3) Terminate a license suspension if the licensee pays the entire debt, or cures the noncompliance, associated with the original suspension action.

This section contains procedures for determining whether the above actions are appropriate, and for taking actions that apply.

In the following procedures **BOLDED CAPITAL LETTERS** at the beginning of a step indicate the following special restrictions:

DELINQUENCY	The step applies **only** when the basis for license suspension is a delinquency.
NONCOMPLIANCE	The step applies **only** when the basis for license suspension is noncompliance with a subpoena.

(Steps without **DELINQUENCY** or **NONCOMPLIANCE** designations apply for either basis of action.)

RECREATIONAL	The step applies **only** when the "license" in question is the person's eligibility for a special permit.
DRIV/PROF/OCC	The step applies **only** for non-recreational drivers,' professional, and occupational licenses.

(Steps without **RECREATIONAL** or **DRIV/PROF/OCC** designations apply for any license type.)

PROCEDURES

Caseworker

1. Monitors outcome of procedures in section CS 530.2 (resolution of NOISL) and takes

action in step 1a, 1b, or 1c below. Also proceeds in steps 1d and 1e, and in step 2, as applicable.

a. If license suspended under section CS 530.2, and
  - licensee contacts regional office objecting to suspension, proceeds to step 3.
  - licensee requests stay hearing, proceeds to step 5.
  - licensee does not contact CSED or request hearing, proceeds as described below according to license type:
    > **[DRIV/PROF/OCC]** Within approximately 60 days after suspension, prepares and sends to licensee form CS-530.3B, License Suspension Reminder Letter. If licensee responds, proceeds as in step 3; if not, takes no further action.
    > **[RECREATIONAL]** Takes no further action.

b. If payment plan approved under section CS 530.2, proceeds to step 6.

c. If license suspension stayed by order resulting from hearing under section CS 530.2, proceeds to step 7.

d. If **additional license** is discovered after NOISL is resolved or payment plan agreement is entered, determines whether action against the additional license is likely to produce some additional enforcement benefit in the case. If so, issues new NOISL for additional license only, and proceeds as in section CS 530.2; where applicable, coordinates with original action at resolution stage.

CONSIDERATIONS: (1) A new NOISL may be issued only when the conditions in section CS 530.2 for initiating license suspension are met (there is a six-month delinquency, or the licensee is out of compliance with a CSED subpoena). (2) If there is a payment plan already in place, the caseworker may wish to refrain from taking any default action on the new NOISL as long as the licensee is making payments under the existing agreement. (3) If as a result of the new NOISL a combined payment plan is offered listing the licenses subject to the original action as well as the licenses subject to the new action, the following limitation applies: The debt acknowledged in the combined agreement may not be greater than the debt noticed or acknowledged for any of the licenses listed, less payments received, unless the licensee agrees to a higher amount.

e. If **new basis** for suspension arises while suspension, payment plan, or hearing stay is in effect based on original NOISL, determines whether new action is likely to produce positive enforcement effect. If so, with supervisor's approval issues new NOISL alleging new basis of action, and proceeds as in section CS 530.2. If not, takes no new action at this time. ("New" basis means either (1) noncompliance with a CSED subpoena, where the action required by the subpoena has not been the subject of any previous NOISL, or (2) accrued debt equal to six months' support obligation, where no part of the debt has been included in any previous NOISL.)

2. **[DELINQUENCY]** If at any time **after** resolution of Notice of Intent to Suspend License in section CS 530.2 an employer or payor is identified for the licensee, proceeds as follows:

   a. If at time payor is identified licensee has already entered into approved payment plan authorizing withholding (that is, Standard Payment Plan Agreement or Financial Hardship Payment Plan Agreement--not Alternative Payment Plan Agreement), or has already agreed to withholding at license suspension hearing where payment plan was imposed, issues Order to Withhold Income as in section CS 510.1 for amount in payment plan, and proceeds to monitor collections. See NOTE and CAUTION in step 11, section CS 530.2 for use of payment plan as Voluntary Withholding Authorization. If necessary (no other authorization for withholding exists), takes action to continue withholding when payment plan expires. Withholding action may include NOI, SNOI, Voluntary Withholding Authorization, or new payment plan, as appropriate.

   b. If at time payor is identified licensee has not agreed to withholding as in step 2a, proceeds as applicable in sections CS 510.1 through 510.20 to obtain withholding for entire support debt.

   c. **[DRIV/PROF/OCC]** If stay hearing occurs at some point in license suspension process (step 14), requests hearing officer take one of following actions as appropriate to status of income withholding process in case:
      (1) Require continued participation in income withholding as a condition of any stay resulting from hearing; or
      (2) Seek licensee's voluntary agreement to income withholding for any payment plan imposed at hearing where amounts in payment plan meet Montana income withholding requirements. (If the licensee refuses to agree to income withholding in this situation the CSED cannot compel it within the license suspension process.)

   NOTE: License Suspension Not Discontinued. Once the Notice of Intent to Suspend License is resolved under section CS 530.2 (by entry of a payment plan, suspension of the license, or a stay of license suspension), the CSED will not discontinue the license suspension remedy simply because income withholding becomes available. A suspension cannot be stayed or terminated solely on the basis of withholding collections; likewise, under a payment plan or other stay, the licensee's license can be suspended for default regardless of whether withholding is in place.

   The above NOTE notwithstanding, income withholding can have certain indirect effects on license suspension, namely:
   (1) Payments collected through withholding are credited to any existing payment plan.
   (2) If an existing suspension is detrimental to continued collection through income withholding (for example, the licensee will lose his job if his driver's license remains suspended), the caseworker **may** move for a stay (step 10j); the

conditions of the stay must include continued participation in income withholding, and the caseworker must move to lift the stay if employment ceases.

3. If licensee contacts regional office objecting to suspension of license, proceeds in 3a or 3b below, according to license type.

    a. **[DRIV/PROF/OCC]** Explains options for relief of suspension (payment plan, payment in full, compliance with subpoena, hearing to stay suspension). If suspension was for default, where applicable coordinates explanations and procedures in this step (3a) with any required in step 3c.

       If contact is of emergency nature skips to step 4.

       Attempts to obtain licensee's agreement to payment plan (see procedures in section CS 530.2), full payment, or compliance with subpoena, and proceeds as follows:

        i. If licensee pays debt in full or complies with subpoena, proceeds to step 8.
        ii. If licensee agrees to and signs payment plan, proceeds to step 9.
        iii. If licensee will not agree to payment plan and does not make payment in full or comply with subpoena, directs licensee to send request for hearing in writing to OALJ; explains hearing unlikely to be granted unless resultant or (for delinquency cases) financial hardship exists. If hearing requested, proceeds to step 5; if not, takes no further action.

    b. **[RECREATIONAL]** Explains special restrictions in (1) and (2) below. If suspension was for default, where applicable coordinates explanations in this step (3b) with any procedures required in step 3c.
        (1) The suspension must, by law, remain in effect for one complete cycle of special drawings within the same license year, regardless of any action taken by the licensee before or during that time.
        (2) If the licensee takes appropriate action before the CSED issues the notice for the **next** year's suspension, eligibility will be returned beginning with that year.

    c. If suspension was for default, and licensee states or implies any circumstances that **may** be grounds for setting aside default (see section 530.2, step 27b), or if caseworker knows of any such circumstances, proceeds as follows:
        i. If caseworker can determine for a fact that NOISL was not received by licensee, or that licensee did timely request hearing, moves for CSED decision and order according to procedures in step 10i.
        ii. If step 3c(I) above does not apply (determination by CSED Administrative Law Judge is required), informs licensee he or she may request relief by sending written request to OALJ stating reasons license suspension default order should be set aside.

4. **[DRIV/PROF/OCC]** In emergency situation (see NOTE below) determines if one or

more of following conditions apply:

(1) There is reason to believe licensee will work with CSED to enter into payment plan, pay debt in full, or comply with subpoena.
(2) There is reason to believe CSED should not have suspended licensee's license, based on identity, debt amount, or compliance facts.
(3) There is reason to believe licensee may qualify for stay or termination based on finding by hearing officer (resultant hardship, default set-aside) and licensee agrees to request hearing if necessary.
(4) Any other circumstances exist where temporary stay of suspension will facilitate collection of support debt or compliance with subpoena.

If so, prepares motion in step 10d for immediate stay of license suspension pending further investigation or hearing, as applicable, and including appropriate ending date. Concurrently, contacts OALJ to expedite motion, decision and order, and Notice to Licensing Authority, to obtain fastest possible relief. (This may involve extra steps by fax, telephone, or hand-delivery.)

Upon obtaining temporary stay, works with licensee to enter into payment plan agreement (using procedures in section CS 530.2, step 14c through 14e), request hearing, or terminate suspension. If efforts not successful, allows stay to expire and license to again be suspended.

NOTE: Emergency Situation Defined. At the discretion of the caseworker an "emergency situation" exists if suspension of the licensee's license has had a sudden practical and adverse effect, and pursuing relief through regular CSED procedures would be unreasonable in the circumstances. EXAMPLES: (1) The licensee is a truck driver who has been stopped en route in another state, and is being held for driving without a license. The licensee cannot make arrangements to enter into a payment plan until he or she can return home to assemble and submit the necessary financial information. (2) The licensee is the only physician or only applicable specialist in a geographical area, and a replacement is not immediately available.

5. If licensee requests hearing with OALJ to stay license suspension, proceeds as in 5a or 5b below according to license type.

   a. **[DRIV/PROF/OCC]** Contacts licensee and attempts to obtain cooperation in (1) or (2) below, as applicable:
      (1) **[DELINQUENCY]** Licensee's signed agreement to payment plan, using procedures in section CS 530.2, steps 14c through 14e (omit if attempt already made in step 3 or 4 above). If licensee agrees to and signs payment plan, proceeds as in step 9.
      (2) **[NONCOMPLIANCE]** Licensee's compliance with subpoena. If licensee complies, proceeds as in step 10.

      If contact does not result in action in (1) or (2) above, proceeds to step 14.

b. **[RECREATIONAL]** If necessary, contacts licensee and explains CSED cannot stay suspension of recreational license eligibility after the suspension is entered. However, the licensee may avoid suspension for the **next** drawing cycle by taking appropriate action (payment plan, payment in full, compliance with subpoena) in response to the original notice. To request a hearing the licensee must wait for the CSED to issue the next year's notice against the licensee's recreational licenses.

6. **[DELINQUENCY]** Upon entry of approved payment plan, monitors payment plan for compliance with terms, declining balance of acknowledged debt, expiration according to terms, and any changes in circumstances of case.

a. If payment plan dollar amount becomes inappropriate because
   - support order is modified while payment plan is in effect, or
   - CSED authority to enforce current support changes while payment plan is in effect, or
   - licensee's financial condition improves--or declines, and licensee requests new plan--while Financial Hardship or Alternative Payment Plan Agreement is in effect,

prepares new payment plan as in step 6d and attempts to obtain licensee's signature. If licensee signs, proceeds as in step 9. If licensee will not sign, determines whether existing plan should be retained and, if so, whether separate income withholding action is needed (see NOTE following step 10a for these determinations).

If existing plan is retained, takes separate withholding action if necessary; for cases of modified support order or change in CSED authority to enforce current support skips to step 11, for other cases takes no further action. If existing plan is not retained, proceeds as in step 10a.

b. If licensee fails to abide by terms of payment plan (defaults), reviews circumstances of default, if necessary contacts licensee to clarify or negotiate situation, and takes action in **one** of steps 6b(I) through 6b(iii) below.

i. Moves to suspend license (proceeds to step 10b); following suspension, proceeds as in step 1a except that for any new payment plan offered to licensee, the following provisions also apply:

(1) At the caseworker's discretion the new payment plan may require the licensee to repay some or all of the total payments missed under the original payment plan (or a higher amount up to the amount of the original debt less any payments applied to it). Repayment may be in addition to regular monthly payments, and may be payable as a lump sum or in installments. (It may be necessary to add special terms for repayment, in writing, to the payment plan agreement--consult the supervisor or CSED staff attorney.)

(2) The debt acknowledged in the new payment plan must be limited to the amount acknowledged in the original payment plan less any debt payments applied to it.

ii. Sends letter to licensee explaining licensee is in default of payment plan, and license may be suspended unless licensee repays full amount of missed payments by a specified date. At caseworker's discretion, letter may require repayment in one payment or in installments; repayment amount may be limited to amount of missed payments now at issue, or may include amounts of any earlier missed payments for which default was waived. Generally, the time allowed for repayment should not extend beyond the original ending date of the payment plan. Takes action according to licensee's response to letter, as follows:

A. If licensee repays missed payments, takes no further action on default; continues to monitor payment plan.

B. If licensee contacts CSED to discuss missed payments but does not repay, at caseworker's discretion either waives default (step 6b(iii)) or moves for suspension (step 6b(I)).

C. If licensee does not repay missed payments or contact CSED, moves for suspension (step 6b(I)).

iii. Takes no action on default; continues to monitor existing payment plan. Arranges for collection of missed payments as follows:

A. If existing plan is Standard Payment Plan Agreement, recalculates required duration of payment plan to include one additional month for each payment missed, and adjusts payment plan ticklers accordingly.

B. If existing plan is Financial Hardship or Alternative Payment Plan Agreement, allows existing expiration date to stand; includes only arrears portions of missed payments in total debt amount of any new payment plan offered at expiration of existing plan.

NOTE 1: "Default" Defined. For purposes of action under this step, a default does not exist until the month in which the payment (or other required licensee action) is due has ended and SEARCHS month-end processing reveals no payment was received. Generally, the caseworker will also take into account the date and due date of the last payment received, to determine whether the licensee has truly "missed" a payment for practical purposes.

NOTE 2: Caseworker Discretion in Taking Action on Default. Upon determining a default exists, the caseworker has the option of prosecuting the default (step 6b(I) or 6b(ii)) or waiving the default in consideration of special facts and circumstances (step 6b(iii)). Generally the CSED will consider waiving a default when a waiver would allow for, or aid in, the continued, regular collection of payments under the existing payment plan. Additional factors in the decision to waive a default may include the following:

(1) Length of time licensee abided by order before failing to pay
(2) Past payment history
(3) Good cause for failing to make payments (for example, medically verifiable temporarily disabling injury that prevents the licensee from earning income)
(4) Whether licensee is still engaging in licensed activity or will return to licensed activity
(5) Effect of federal Consumer Credit Protection Act limits on income withholding payments, if applicable
(6) Potential CSED error in processing payment.

NOTE 3: Delayed Action on Default Not Permitted. A caseworker "waives" a default on a payment plan by taking no action in 6b(I) or 6b(ii) by the end of the month following the month in which the payment (or other required licensee action) was due. Once a particular default is waived, any later action to suspend the license based solely on that default is prohibited by CSED policy.

NOTE 4: Accounting for Missed Payments. When a licensee defaults on a payment plan, the additional debt that accrues as a result of the missed current support payment may not be added to the debt payable under the license suspension action. If the CSED waives the default, the missed payment is collected as in step 6b(iii). If the CSED takes the default, the missed payment is collected as in step 6b(I) if and when the licensee enters into a new payment plan staying the suspension.

c. If payment plan contains specific expiration date, prepares new payment plan as in step 6d and attempts to obtain licensee's signature before existing plan expires. If licensee signs, proceeds as in step 9. If licensee will not sign, skips to step 10a.

d. When it is necessary in step 6a or 6c above to prepare a new payment plan to replace an existing plan, obtains updated Financial Affidavit or other financial information as appropriate; discusses any new or changed circumstances with licensee; and determines appropriate plan type and calculates monthly payment amount as in section CS 530.2. If licensee does not provide requested financial information, proceeds as for refusal to sign new plan in step 6a or 6c.

NOTE: New Standard Payment Plan Agreement Not Limited to 1/24th of Remaining Debt. In calculating the debt portion of the monthly payment for a Standard Payment Plan Agreement being prepared in 6a or 6c above,

- if the existing plan is a Standard Payment Plan Agreement, the CSED will retain the debt payment amount from the existing plan.
- if the existing plan is a Financial Hardship or Alternative Payment Plan Agreement, the CSED will calculate the debt payment amount at 1/24th of the debt acknowledged in the existing plan.

e. If licensee continues payments until acknowledged debt paid in full, proceeds to step 8.

7. Upon entry of order resulting from hearing in section CS 530.2 staying license suspension and imposing terms of stay, monitors for compliance by licensee and for continued basis of stay. If noncompliance (with hearing order) occurs or basis of stay ceases to exist, proceeds to step 10e for motion to lift stay.

   [DELINQUENCY] If terms of stay include any type of periodic payments (imposed payment plan), and support order is modified, or CSED authority to enforce current support changes, or licensee's financial condition improves (or declines, and licensee requests new terms) while stay is in effect, prepares new payment plan as in step 6. If licensee signs new plan, proceeds to step 9. If licensee will not sign new plan, determines whether motion to lift stay is appropriate (see Table 1, Payment Plan Provisions). If so, proceeds to step 10e. If not, for modified support order or change in CSED authority to enforce current support, proceeds to step 11; otherwise takes no further action on this issue, and continues to monitor imposed payment plan.

8. **[DRIV/PROF/OCC]** If licensee pays debt in full or complies with CSED subpoena, moves for CSED decision and order according to procedures in step 10f or 10g as follows:
   a. If debt is paid or compliance is obtained while license is suspended or suspension is stayed, moves for termination of suspension.
   b. If debt is paid or compliance is obtained before license is ever suspended in case, moves for declaration debt is paid in full, or declaration licensee has complied in full.

   NOTE 1: **[DELINQUENCY]** Payment/Collection Type. "Payment" may be accomplished by any accepted method of payment or collection, with or without an approved payment plan. **CAUTION:** Certain types of collections (tax offsets, writs of execution, for example) are tied to specified debt periods. To the extent these debt periods are not included in the period covered by the noticed or acknowledged license suspension debt, the collection is not considered a payment on the license suspension debt.

   NOTE 2: **[DELINQUENCY]** Payment in Full Defined; Additional Debt Not Included. For purposes of license suspension, "payment in full" occurs when the licensee has paid an amount toward the license suspension debt that is equal to the amount contained in the Notice of Intent to Suspend License, or equal to the amount contained in an approved payment plan if higher. If the licensee accrues or the CSED discovers additional debt after the NOISL is served, and the additional amount is not included in a payment plan, the additional amount may not be used to increase the total amount payable under this action. **To enforce the additional debt by license suspension action, see step 21.**

9. **[DELINQUENCY]** If licensee signs payment plan proposed by CSED, prepares and attaches Motion and Order for License Suspension Action if applicable (see step 10), provides necessary stuffers, and sends package with copy of Debt Computation Worksheet (and, for Financial Hardship Payment Plan, copy of Hardship Adjustment Worksheet) to OALJ for approval. Retains copy in case file and diaries return. Upon approval (step 13) proceeds to monitor new plan as in step 6.

10. When any of the situations in 10a through 10j occurs, prepares form CS-530.2F, Motion and Order for License Suspension Action (MOLSA), specifying motions as shown. Specifies licenses to which motion applies. NOTE: Licenses listed in the MOLSA may be from different notices or payment plans as long as (1) all the notices or payment plans were issued on the same basis of action (a delinquency, or a noncompliance), (2) all the notices or payment plans are listed individually at the appropriate locations in the MOLSA, and (3) the exact same motion applies to all the licenses for the exact same reason.

    Ensures Certificate of Mailing lists name and address of licensee and licensee's attorney; ensures list of regular copies includes names of other parent or custodian, parent or custodian's attorney, other state if applicable, and CSED caseworker. Attaches any documents specified in MOLSA (coordinates with step 9 if payment plan is being submitted); provides necessary stuffers, plus additional stuffer showing name and address of licensing authority; and sends package to OALJ. Retains copies of MOLSA and any attachments in case file; diaries return; and proceeds to step 20.

    a. **[DELINQUENCY]** Existing payment plan becomes subject to expiration for one or more of following reasons, and licensee either refuses to enter into new payment plan proposed by CSED or refuses to provide financial information requested by CSED:
       (1) Expiration date listed in existing plan has arrived or will soon arrive
       (2) Support order has been modified
       (3) CSED authority to enforce current support has changed
       (4) Licensee's ability to pay has changed.

       Motions (subject to NOTE below): Declare existing payment plan expired; suspend license (or lift existing stay of suspension).

       NOTE: Exceptions: Older Agreements; Best Interests of Support Enforcement. When item (2), (3), or (4) in step 10a above applies and the licensee will not agree to a new plan, the CSED may declare the existing payment plan expired only if the payment plan agreement itself specifically allows it. Some payment plan agreements entered before August 1996 do not include the necessary language (see Table 1). In these cases the existing payment plan is retained (no Motion and Order is entered), and the plan continues according to its terms. Of course, the CSED may in its discretion allow continuation of **any** existing payment plan, if the licensee refuses a new plan and collection under the existing plan would be in the best interests of support enforcement. ("Best interests" are presumed when

Table 1. PAYMENT PLAN PROVISIONS

Payment Plan Type and Date	Provisions Allow CSED to...		
	Upon MODIFICATION OF SUPPORT OBLIGATION, or CHANGE IN AUTHORITY TO ENFORCE CURRENT SUPPORT,...		Upon CHANGE IN FINANCIAL CONDITION OF OBLIGOR...
	Offer new plan and, if refused, declare existing plan expired	Change distribution of payments without notifying obligor	Offer new plan and, if refused, declare existing plan expired
SPP before 8/96	No	No	No
FHPP before 8/96	Yes--for modification, if new plan is FHPP No--otherwise	No	No
SPP 8/96 or after	Yes	Yes	No
FHPP 8/96 or after	Yes	Yes	Yes
APP 8/96 or after	Yes	Yes	Yes
Payment plan imposed at hearing	See decision and order*	See decision and order*	See decision and order*
Custom-language payment plan**	See payment plan language	See payment plan language	See payment plan language

SPP - Standard Payment Plan; FHPP - Financial Hardship Payment Plan; APP - Alternative Payment Plan

* Most payment plans imposed in 8/96 or after contain this provision.

** "Custom-language" payment plans
- meet the definition of a payment plan in section 40-5-701, MCA;
- are negotiated and obtained by the caseworker or regional attorney;
- differ in some provision from the CSED's Standard Payment Plan, Financial Hardship Payment Plan, and Alternative Payment Plan; and
- may be called "partial payment plans" or any other names not associated with official CSED forms.

the monthly payment amount in the new plan is lower than the amount in the existing plan.) **IMPORTANT: If (2), (3), or (4) in step 10a applies and an existing plan is being retained that does not meet the income withholding requirements of the new situation, the CSED must--when and if a payor is identified--take the necessary steps in CS 510.1 through 510.20 to implement withholding for the required amount.**

b. **[DELINQUENCY]** Licensee fails to comply with terms of existing payment plan.

Motion: Suspend license (or lift existing stay of suspension).

c. **[DELINQUENCY, DRIV/PROF/OCC]** Licensee enters into payment plan after license is suspended.

Motion: Stay license suspension.

d. **[DRIV/PROF/OCC]** At caseworker's discretion, emergency situation requires immediate stay pending further investigation or hearing.

Motion: Stay license suspension.

e. Terms of stay ordered by hearing officer in section CS 530.2, or in step 17 of this section, no longer apply (licensee has failed to comply with terms, or circumstances supporting stay no longer exist).

Motion: Lift existing stay of suspension.

f. **[DRIV/PROF/OCC]** Licensee pays debt in full or complies with subpoena while license is suspended.
[DRIV/PROF/OCC and RECREATIONAL] Licensee pays debt in full or complies with subpoena while suspension is stayed. (Note that in the case of recreational license eligibility a "stay" situation is possible only as the result of a hearing, where the decision and order suspended the eligibility but immediately stayed the suspension.)

Motion: Terminate license suspension. (Note that a debt comp is not required in this situation.)

g. Licensee pays debt in full or complies with subpoena before license is ever suspended in case.

Motion: Declare debt paid in full, or declare noncompliance cured. (Note that a debt comp is not required in this situation.)

h. Case closure proceedings initiated while license is suspended or suspension is stayed.

Motion: **[DRIV/PROF/OCC]** Terminate license suspension. (**[RECREATIONAL]** No motion applicable--eligibility remains suspended for license year despite case closure.)

NOTE: Closing vs. Inactivating Incoming Interstate Cases. At the caseworker's discretion in an incoming interstate case, if the case becomes eligible for closure but is expected to reopen in the future, and the CSED can reasonably continue to track payments or compliance to verify the existence of a remaining debt or noncompliance, it may be beneficial to inactivate, rather than close, the case, to retain the license suspension status and authority.

i. Case closure proceedings initiated while payment plan in effect, where license has never been suspended.

Motion: Terminate license suspension **action**. (Note that this requires adjustment of the form to show the **action** is being terminated, not the (nonexistent) suspension.)

j. Other (either of the following conditions applies):

(1) At the caseworker's discretion and with the supervisor's approval, unusual facts of the case indicate the existing license suspension is not appropriate.

Motion: Stay license suspension; or, terminate license suspension.

NOTE: Use of "Unusual Facts" Option to Stay or Terminate. When this option applies, completion of the motion requires a brief description of the circumstances. Examples of "unusual facts" situations may be (1) the other parent or custodian (if not the licensee) requests the CSED stay or terminate a suspension for good cause, (2) the caseworker discovers proper service of notice was not obtained and, for this reason, the default should be set aside (motion to terminate; also see NOTE below), and (3) the caseworker determines continued license suspension would be detrimental to income withholding (motion to stay).

(2) The licensee resumes payments under an existing payment plan within 10 days after the ALJ signs a decision and order suspending the license for failure to comply with the payment plan.

Motion: Stay license suspension. (The MOLSA should state that the licensee resumed payments **before the suspension became final**; the MOLSA should also specify the date of the payment plan agreement.)

NOTE: Determining "Resumed Payments." This option is available at the caseworker's discretion in cases where the stay would allow for, or aid in, the continued, regular collection of payments under the existing payment plan. The use of the stay should be consistent with any negotiations conducted in step 6b.

NOTE: Actions Not Requiring Motion and Order. Use of the Motion and Order for License Suspension Action is not necessary when the status of the licensee's license in the case will not change as a result of the action. For example, when entry of a new payment plan has the effect of continuing an existing stay, the Motion and Order is not needed. Also, the MOLSA is not appropriate for setting aside a default in cases where a determination by a CSED Administrative Law Judge is required (see section CS 530.2, step 27 for procedures in this situation).

11. **[DELINQUENCY]** In cases where an existing payment plan (voluntary or imposed) is retained after a support order is modified or after CSED authority to enforce current support has changed, determines whether the existing plan provides for distribution according to the new monthly current support amount. If not, prepares and sends to licensee form CS-530.3A, Letter Adjusting Distribution. (Generally, as shown in Table 1, payment plans entered before August 1996 do not provide for changes in distribution.) Does not send any subsequent letters, but maintains copy of this letter in file, documenting licensee has been informed of any future automatic changes in distribution.

Hearing Officer

12. Upon receipt of Motion and Order for License Suspension Action, reviews motion(s) and signs decision and order if appropriate; reviews and signs any accompanying payment plan agreement as in step 13, and proceeds to step 18.

13. **[DELINQUENCY]** Upon receipt of payment plan proposed by CSED and signed by licensee, reviews agreement and, if appropriate, signs decision and order at end of agreement; proceeds to step 18.

14. **[DRIV/PROF/OCC]** If a motion for a stay of license suspension is received from the licensee after an order to suspend has been issued, reviews request to determine if licensee has alleged valid reason for stay concerning resultant or financial hardship. If not, issues order denying request, mails copies to licensee, licensee's attorney, and caseworker, and takes no further action. If so, grants hearing on motion, and proceeds to step 16.

    [RECREATIONAL] If a motion for a stay of license suspension is received from the licensee after an order to suspend has been issued, denies request, explaining that stays are not available in cases of suspension of recreational license eligibility.

    NOTE 1: New Matters Only. If the licensee's reason for requesting a stay has already been considered, for the same incident, or if the circumstances upon which the request is based existed at the time of the original hearing, the request must be denied.

NOTE 2: Suspension Not Stayed Before Hearing. Generally the CSED will not stay a suspension before a stay hearing. However, in extraordinary circumstances and upon a sufficient showing by the licensee, the hearing officer may stay the suspension pending the outcome of the stay hearing.

NOTE 3: **[DELINQUENCY]** Hearing Declined in Favor of Payment Plan. Upon receipt and approval of a signed payment plan at any time before a requested stay hearing, the OALJ will inform the licensee the hearing is not needed, and will dismiss any hearing date already set.

Caseworker

15. **[DRIV/PROF/OCC]** Upon being informed by OALJ of license suspension stay hearing (step 16), prepares, copies, and distributes exhibits and witness/exhibits list as in section CS 530.2, step 21. Prepares witnesses and testimony for hearing.

    NOTE: Preparation for Stay Hearing. Unlike the usual CSED "notice" hearing where the burden is on the licensee to prove a mistake of fact, the license suspension stay hearing requires the CSED to rebut (or support) the licensee's case. Evidence presented by the CSED must relate to the licensee's claim of financial or resultant hardship, and the caseworker must prepare for the hearing accordingly. The OALJ will provide the caseworker with a copy of the hearing request, but if the request is not specific enough to allow for collection of appropriate evidence, the caseworker should contact the licensee and attempt to obtain as much information and documentation as possible about the specific grounds for the hardship. For example, the licensee may intend to claim a financial hardship based on the cost of supporting a parent in a nursing home, and these expenses may be unknown to the CSED. (If in the course of identifying the basis for the request for stay the caseworker discovers the reason is not a "new matter" as described in step 14, NOTE 1, the caseworker should move for dismissal of the hearing.) If the licensee will not provide the caseworker with a specific reason for the request for stay, the caseworker should consult with the CSED staff attorney on a motion for discovery or other necessary action.

Office of the Administrative Law Judge (OALJ)

16. **[DRIV/PROF/OCC]** Prepares and issues Notice and Order for Stay Hearing, scheduling date and time for hearing. Copies notice and order, files original, and mails copies with attached hearing instructions to licensee, licensee's attorney, and caseworker.

Hearing Officer

17. **[DRIV/PROF/OCC]** Conducts stay hearing. If licensee does not appear for stay

hearing, considers licensee's defenses or objections to license suspension to be without merit. Issues hearing decision and order ruling on licensee's request. If stay is granted, includes in decision and order any imposed payment or compliance plan and any other special conditions for continuance of stay (continued participation in income withholding, for example).

OALJ

Completes Certificate of Mailing listing name and address of licensee and licensee's attorney. (Checks SEARCHS for any reason to protect address of licensee--if found, removes address before printing decision and order.) Elsewhere in document lists names of individuals to receive regular copies. Obtains signature of hearing officer on final decision and order. If necessary for use in step 19 obtains name and address of licensing authority from caseworker.

OALJ

18. Upon entry of CSED decision and order resulting from license suspension stay hearing, Motion and Order for License Suspension Action, or proposed payment plan, copies decision and order and any attachments, files original, and mails copies to individuals listed in Certificate of Mailing or shown as receiving regular copies. Coordinates processing in cases where both MOLSA and payment plan decision and orders are entered.

    NOTE: Ten-Day Challenge Period. If a non-hearing decision and order suspends the licensee's license or lifts a stay on the suspension, and is based on a finding the licensee has failed to comply with (or can no longer claim to be true) the terms of a payment plan or stay order, the CSED allows a period of 10 days during which the licensee may challenge the finding and, if applicable, request a hearing. The OALJ may (1) vacate the decision and order without a hearing, based on a showing by the licensee the terms were met, (2) allow the challenge and grant a hearing, or (3) disallow the challenge and deny the hearing. The hearing is conducted in the same way as a stay hearing (steps 14 through 17). If the licensee does not contest the suspension decision and order, it becomes final 10 days after entry, and the procedures in step 19 apply.

19. Determines status of licensee's license with licensing authority, and proceeds as in 19a or 19b below.

    a. **[DRIV/PROF/OCC]** If final decision and order (step 18) changes license status with licensing authority, prepares appropriate version of form CS-530.3G, Notice to Licensing Authority from (1) through (4) below, specifying CSED action:
        (1) Suspending license
        (2) Staying license suspension
        (3) Lifting stay of license suspension
        (4) Terminating license suspension.

Obtains signature of hearing officer and mails certified copy of notice to licensing authority certified mail, return receipt requested. Files original.

NOTE: Tracking Status of Licensee's License. The OALJ is responsible for tracking the status of the licensee's license with the licensing authority. There are two situations where a CSED decision and order may NOT affect the license status. In one, the decision and order may preserve the existing status of the license in the case--for example, when a new payment plan is approved superseding an existing payment plan, the license status under the existing payment plan (license not suspended, or license suspension stayed) is continued. In the other situation, a decision and order in one action may have no effect on the license status because a decision and order in another action involving the same licensee takes precedence, or has already produced the same effect. The following rule applies in multiple-action situations: If a licensee's license is suspended in ANY action, the license must remain suspended with the licensing authority until the suspension is stayed or terminated in ALL the actions against that licensee.

b. **[RECREATIONAL]** If licensee's eligibility for recreational licenses is being suspended or stay is being lifted, enters event for suspended FWP eligibility, identifying licensee (by role in case) and applicable license year. (Note that "lifting a stay" applies only in cases where the license was suspended but the suspension was immediately stayed as part of the same hearing order.) For licensees who are not participants in case in which action is being brought, maintains manual list, obtains needed data from caseworker where possible, and adds to list submitted in step 22 at appropriate time.

NOTE: Termination Based on Default Set-Aside. In the rare event that suspension of the licensee's eligibility is being terminated (that is, eligibility is being reinstated) because the suspension was the result of a default that has now been set aside, it is the responsibility of the OALJ to arrange for the SEARCHS event described above to be deleted.

Caseworker

20. If action in step 12 or 17 results in license suspension, enters appropriate SEARCHS case note and, at caseworker's discretion, adds message to CSU screen saying license is suspended and any call from licensee should be transferred to caseworker. Removes message when all suspensions in case are stayed or terminated, or when direct conversation with licensee no longer needed.

    [DRIV/PROF/OCC] If reminder letter not previously sent to this licensee in this case, sets tickler for 60 days to send reminder letter to licensee as in step 1a (this section).

21. If procedures in this section (530.3) result in suspension, payment plan, or hearing stay, monitors for events affecting status, and begins again in step 1a, 1b, or 1c if

applicable.

CSED Central Office

22. **[RECREATIONAL]** Prepares and submits list of ineligible licensees as in section CS 530.2.

Department of Fish Wildlife and Parks

23. **[RECREATIONAL]** Matches CSED list with applications received, and takes action for individuals identified, as in section CS 530.2.

Caseworker

24. **[RECREATIONAL]** On or about September 1 of year for which eligibility suspended, reviews case and initiates new suspension action if applicable, as in section CS 530.2.

SUPERSEDES

CS 601.2, Voluntary Paternity Acknowledgment and Records, July 14, 1996.

REFERENCES

Sections 40-6-105 and 50-15-210 MCA; 45 CFR sections 302.70(a)(5) and 303.5(g)

POLICY

The purpose of this section is to document certain aspects of the system of voluntary paternity acknowledgment and records currently in place in Montana. Specifically, this section describes

- the procedures for creating and filing voluntary paternity records in Montana,
- the overall role of the CSED within the state voluntary paternity acknowledgment process, and
- the specific procedures by which Montana complies with federal child support enforcement requirements for voluntary paternity establishment.

Caseworkers and administrative staff should refer to information in this section in taking required CSED actions and in locating or evaluating voluntary paternity records. Procedures are given for two separate processes:

I. HOSPITAL PATERNITY ACKNOWLEDGMENT
II. DIRECT-FILE PATERNITY ACKNOWLEDGMENT AND WITHDRAWAL OF ACKNOWLEDGMENT.

The first process involves direct CSED actions; the second requires only indirect support by the CSED. It is important for the caseworker to understand both of these processes, however, in managing voluntary paternity cases and issues most efficiently.

PROCEDURES

The following procedures include some actions taken by non-CSED agencies. These "actions" represent only the CSED's general understanding of the agencies' operations and are not intended to prescribe specific steps or policies for those agencies.

I. HOSPITAL PATERNITY ACKNOWLEDGMENT

CSED Central Office

1. Provides hospital paternity acknowledgment material to Montana Vital Statistics Bureau (VSB); updates or resupplies material as needed. Material includes written instructions for hospital staff, letter of explanation to parents, Paternity Acknowledgment forms, Notice of Withdrawal of Paternity Acknowledgment forms, and booklet describing parents' rights and responsibilities in acknowledging paternity. Also, sets dollar amount for reimbursing hospitals for reasonable costs of administering acknowledgments.

Vital Statistics Bureau (VSB)

2. Supplies all Montana hospitals with paternity acknowledgment material described in step 1.

CSED Liaison

3. Trains hospital staffs in procedures for obtaining and processing acknowledgments, and for receiving reimbursement from CSED; provides refresher training as needed. Provides material or training to other persons or facilities upon request (may include midwives, pre-natal clinics). At any time answers questions from hospital staff or other persons involved in supporting hospital paternity program.

Hospital Staff

4. Upon birth of child to unmarried mother, provides paternity acknowledgment material to both parents (or to mother if father not present), and explains opportunity to voluntarily acknowledge paternity. If either parent requests information not contained in written material, refers parents as follows:

   a. For questions about properly completing acknowledgment form, refers parents to Vital Statistics Bureau or CSED.

   b. For questions about paternity establishment, refers parents to CSED.

CSED (Customer Service Unit or Regional Staff)

5. Receives and answers questions from parents about obligations and benefits of paternity establishment.

Hospital Staff

6. Allows time for parents to read and consider acknowledgment information, then proceeds as follows, coordinating with actions in step 7:

   a. If parents willing to sign Paternity Acknowledgment at any time during mother's hospital stay, assists in completion of form if necessary and notarizes signatures on acknowledgment.

   b. If parents not willing to sign acknowledgment during mother's hospital stay, advises parents they may still acknowledge paternity by sending the completed, notarized acknowledgment directly to VSB at the address on the form. (Proceeds in step 7 for birth certificate only.)

7. Enters birth information on state system, and creates Certificate of Live Birth (birth certificate) for electronic access by VSB. Obtains mother's signature on paper copy,

attaches signed Paternity Acknowledgment, and sends to local registrar (usually Clerk and Recorder) for county where hospital located.

NOTE: At the time of this writing, only a few hospitals were creating birth certificates "on line;" most were still preparing paper documents only. Additionally, hospitals not yet on line were required to send a copy of the Paternity Acknowledgment to the CSED with an invoice for reimbursement of costs. Full participation in the on-line creation of birth certificates is expected sometime in 1998.

Local Registrar

8. Receives signed (paper) birth certificate and Paternity Acknowledgment from hospital. Reviews for conformance to state requirements; signs and dates birth certificate, and sends to county Clerk and Recorder. Sends original Paternity Acknowledgment to VSB. (For birth certificates received from hospitals not yet on line, sends original registered birth certificate to VSB with copy to Clerk and Recorder.)

VSB

9. Receives, registers, and assigns number to electronic birth certificate. Receives original Paternity Acknowledgment and files with birth certificate. (For birth certificates prepared by hospitals not yet on line, receives registered (paper) birth certificate from local registrar.)

CSED Administrative Support Unit

10. Regularly accesses electronic birth certificate system, and generates report listing Paternity Acknowledgments obtained and submitted by hospitals during preceding time period; arranges for payments to hospitals. (For Paternity Acknowledgments obtained by hospitals not yet on line, pays hospital upon receipt of invoice and copy of acknowledgment.)

CSED Central Office

11. Quarterly produces and submits federal Report of In-Hospital Paternity Acknowledgements, listing number of reporting hospitals, number of acknowledgments received from each hospital, and number of unwed births.

CSED Liaison

12. Evaluates each hospital's program; contacts appropriate hospital staff and discusses possible problems; resolves any procedural issues; provides refresher training for hospital staff if needed.

II. DIRECT-FILE PATERNITY ACKNOWLEDGMENT AND WITHDRAWAL OF ACKNOWLEDGMENT

CSED Central Office

1. Provides following material to Montana Vital Statistics Bureau (VSB) and, upon request or recognized need, to any other public agency having regular contact with unmarried parents:
   (1) Letter of explanation to parents
   (2) Paternity Acknowledgment forms
   (3) Notice of Withdrawal of Paternity Acknowledgment forms
   (4) Paternity Information for Parents--booklet describing parents' rights and responsibilities in acknowledging paternity.

   Arranges with VSB and other agency staffs for distribution of material to parents in step 2.

   NOTE: Other Agencies. Some examples of agencies having contact with unmarried parents are social programs concerned with maternal and child health; judicial agencies such as the district courts; and not-for-profit legal assistance or parents' rights groups.

VSB or Appropriate Public Agency

2. Upon direct request of either parent for assistance with voluntary paternity acknowledgment, provides booklet and forms described in step 1.

   NOTE: Acceptable Filing Routes. Paternity Acknowledgments not submitted through the hospital at the time of birth (see part I, this section) may be submitted by the parents directly to VSB. Any Notice of Withdrawal must be submitted directly to VSB within 60 days after the date the associated Paternity Acknowledgment was signed.

CSED (Customer Service Unit or Regional Staff)

3. Receives and answers any questions from parents about obligations and benefits of paternity establishment.

VSB

4. Upon receipt of acknowledgment or timely withdrawal containing necessary notarized signatures, makes appropriate entries to, and files documents with, existing birth records. For acknowledgment that cannot be filed with existing birth records (child not born in Montana, or other reason), files in separate paternity acknowledgment registry.

SUPERSEDES

[new section]

REFERENCES

MCA § 40-5-232(6)

POLICY

In 1997, the Legislature modified MCA § 40-5-232 to require the CSED to notify alleged fathers of a paternity claim made against them. This notification must occur "promptly," and must be made without regard to whether or not there is sufficient evidence to commence a paternity action. Notification should be made once the alleged father is located.

The statute limits this requirement only to situations where the claimant/custodian is the child's mother. Thus, this notice is not issued when a third party custodian opens a case.

Additionally, the CSED is required to provide notice "in a manner that places the demands of individual privacy above the merits of public disclosure." For that reason, notices addressed to an alleged father should be mailed in an envelope marked "Personal and Confidential."

PROCEDURES

Caseworker

1. **As a part of the case opening procedures**, a "Notification of Paternity Claim Letter," form CS-601.3A, must be sent promptly to any located man named on a referral or application as a possible father of a child. **If the named man is not located**, notification must occur as soon as he is located.

2. **At any time after case opening** a located man is identified by the child's mother as a possible father, the notification must be promptly sent. Again, if the named man is not located, notification must occur as soon as he is located.

3. If a man who received a "Notification of Paternity Claim Letter" is later determined not to be a possible father by reason of another man's blood test, or if the case is closed without resolution of the paternity claim, a "Paternity Claim Follow-Up Letter," form CS-601.3B, should be mailed to each alleged father whose only contact with the CSED was the "Notification of Paternity Claim Letter." This letter must also be sent in an envelope marked "Personal and Confidential."

SUPERSEDES

CS 601.4, Request for Genetic Testing, Novermber 12, 1997

REFERENCES

42 USC §666(a)(5); MCA §40-5-233.

POLICY

In a CSED case an alleged father, a mother, or a child (through the child's custodian) may request the CSED order genetic testing to determine paternity. By law, the CSED must grant the request if it is supported by a sworn statement establishing a reasonable probability of sexual contact or lack of sexual contact (depending on whether the requestor is alleging or denying paternity).

The opportunity to request genetic testing is available regardless of whether the CSED has initiated an administrative paternity action under procedures beginning in section CS 602.1. However, if there is an action in progress, and the CSED orders genetic testing in that action, the request process outlined in this section will be redundant, and the CSED will not order a "second" test.

The CSED cannot initiate the request process, nor can the process be used as a substitute for any required paternity action; the process will not stop the running of the federal time frames for service of process and establishment. It is offered simply to provide access to testing for parties who can show a legal basis, and for whom testing would not otherwise be ordered. It is expected these situations will be rare. The CSED may excuse parties from genetic testing ordered under this section if there is good cause to do so based on the best interests of the child.

PROCEDURES

Customer Service Unit

1. Upon being contacted by a person requesting genetic testing to determine the paternity of a child, or making any equivalent assertion or request, determines whether the requestor is a participant (mother, alleged father, current custodian) listed on the SEARCHS CAPS screen in a CSED case involving the child. If so, refers the requestor to the caseworker for processing of the request. If not, explains requests are accepted only in CSED cases. If the requestor wishes to open a case by applying for CSED services, sends an application packet; if not, takes no further action.

Caseworker

2. Upon being contacted by a participant in a CSED paternity case who requests genetic testing, explains the process for administrative paternity establishment in CSED cases (sections CS 602.1, 602.2, 605.2, and 605.3), and the ways in which that process may result in voluntary or ordered genetic testing. If the requestor is not satisfied the regular establishment process will suit his or her purposes, explains the process for

obtaining genetic testing under these PROCEDURES (section CS 601.4). If the requestor wishes to proceed, prepares and sends form CS-601.4A, Request for Genetic Testing.

3. Upon receiving a completed Request for Genetic Testing, enters a SEARCHS case note for the request received. Determines whether the CSED has initiated any formal or informal (NPR or mama/papa letter) paternity establishment actions involving the parties named in the request. If so, coordinates the two processes as applicable, contacting the requestor as needed. (For example, if the requestor is an alleged father in the paternity case, he may prefer to sign the Consent to Genetic Testing rather than submit to an additional interview under oath (see step 5). Or, if the requestor knows there is a good chance the other party will object to the request (see step 8), the requestor may prefer to allow the existing paternity establishment action to advance to the hearing stage.)

   Discontinues procedures in this section at any time if the requestor withdraws the request. If the request is withdrawn by telephone, sends a letter confirming the telephone conversation. Enters a SEARCHS case note for the request withdrawn.

4. Reviews the request for completeness and forwards to the regional paralegal staff or designated paternity interviewer.

Paralegal Staff or Designated Paternity Interviewer

5. Schedules a telephone interview with the requestor. Arranges for the requestor to be put under oath at the beginning of the interview; conducts the interview on the evidence of the requestor to determine whether,
   - if the requestor is alleging paternity, there is a reasonable probability of the requisite sexual contact between the parties named in the request, or
   - if the requestor is denying paternity, there is a reasonable probability of the nonexistence of sexual contact between the parties.

6. Issues--with copies to the caseworker and appropriate persons, and the original to the OALJ--written findings of fact, conclusions of law, and an agency decision
   - granting the request for genetic testing if the reasonable probability required in step 5 is found. Proceeds to step 7.
   - denying the request for genetic testing if the reasonable probability required in step 5 is not found; proceeds to step 9.

   Enters a SEARCHS case note for the genetic testing interview held and the request granted or denied.

Caseworker

7. If genetic testing request is granted, follows procedures in sections CS 604.1 and 605.2 or 605.3 and
   - arranges genetic testing;

- prepares form CS-605.2B, Genetic Testing Subpoena, and obtains the paternity interviewer's signature; and
- processes the form, monitors for compliance, and takes actions as necessary to compel compliance.

Coordinates as necessary with any ongoing paternity establishment actions in the case.

8. For a request granted in step 6, if a party named in the original request contacts the CSED objecting to the decision, explains the party may submit a request to "quash" (disallow) the order contained in the Genetic Testing Subpoena. Also explains (as in step 2) any pertinent ongoing processes that may result in genetic testing independently of the procedures in this section. If the objector still wishes to prevent the genetic testing granted in step 6, prepares and sends form CS-601.4B, Request to Quash Genetic Testing Subpoena.

9. For a request denied in step 6, if the requestor contacts the CSED objecting to the decision, explains the requestor may reapply, but if there is no new information to be presented at the interview, the decision will be the same. If applicable, also discusses possible bases for initiating formal action via an NPR, and proceeds as in section CS 605.2 or 605.3 if appropriate. If asked, explains there is no opportunity for judicial review of the denial.

OALJ/ALJ

10. Upon receipt of a properly completed Request to Quash Genetic Testing Subpoena, informs the caseworker, and schedules and conducts a hearing on the request. Issues to be determined at the hearing are the same as those determined at a hearing on an NPR. Issues a decision and order from the hearing.

Caseworker

11. Prepares exhibits and arranges for testimony of witnesses at the hearing. If applicable, coordinates with any other opportunity for hearing that may be pending in the paternity case. Attends and appears as a witness at the hearing. If the decision and order resulting from the hearing upholds the Genetic Testing Subpoena, reschedules testing if necessary and monitors for compliance.

SUPERSEDES

CS 602.1, Case Initiation--Mother Obligee, January 18, 2001.

REFERENCES

Sections 40-5-231 through 40-5-237, 40-6-101 through 40-6-118, 42-2-201 et seq., and 50-15-210, MCA; Rule 301, Montana Rules of Evidence

DEFINITIONS

The following definitions apply to the terms used in this section:

(1) Alleged father--a man who is named as a possible father of the child, who has not been excluded by genetic testing, and who is not a "presumed father" according to these definitions

(2) Irrebuttable presumption--the presumption created when (a) or (b) below applies. An irrebuttable presumption has the same force and effect as an administrative or court order adjudicating paternity; it may be set aside by the authorizing jurisdiction only for fraud, duress, or material mistake of fact.

  (a) There is a voluntary acknowledgment of paternity on file with the Montana Office of Vital Statistics (either with the child's Montana birth certificate or in the acknowledgment registry for out-of-state births) **and** the acknowledgment was signed on or after July 1, 1997, **and** neither parent rescinded the acknowledgment before the earlier of

  - 60 days after the acknowledgment was signed, or
  - a support order was established where both parents were parties to the establishment proceedings.

  (b) There is an irrebuttable presumption of paternity under the laws of an Indian territory or another state.

(3) Multiple-allegation--a case involving more than one alleged or presumed father

(4) Negative (genetic testing results)--results conclusively showing the man could not be the natural father of the child

(5) Paternity case--a case in which the child is born to an unmarried mother or to a married mother who claims the married father is not the true father; no man has genetically tested positive; there is no court or administrative order declaring paternity; there is no irrebuttable presumption of paternity; and single- or multiple-allegation conditions apply

(6) Positive (genetic testing results)--results showing a probability of 95% or higher the man is the natural father of the child

(7) Presumed father--a man for whom a rebuttable presumption applies, and who has not been excluded by genetic testing

(8) Presumption--the basis the CSED uses to establish a support order in the absence of a paternity order. A presumption may be rebuttable or irrebuttable depending on the facts that created it. As used in the PROCEDURES in this section, the term "presumption" means a rebuttable presumption.

(9) Rebuttable presumption--the presumption created when any of the situations in (a) through (h) below applies. A rebuttable presumption may be refuted by a preponderance of the evidence in a court of law, or by genetic testing that excludes the man as the child's natural father.

(a) The child is born "of the marriage" (during the marriage or within 300 days after its termination or legal separation)
(b) There is a voluntary acknowledgment of paternity on file with the Montana Office of Vital Statistics (either with the child's Montana birth certificate or in the acknowledgment registry for out-of-state births) that
  - was signed before July 1, 1997, or
  - was signed after July 1, 1997, has not been rescinded by either parent, and has not yet become irrebuttable (see definition).
(c) There is a notice of intent to claim paternity dated prior to October 1, 1997, on file with the proper Montana agency, the mother has not denied the claimant is the father, and the child has now been born
(d) There is a registration (of parental interest) on file in the Putative Father Registry maintained by the Montana Office of Vital Statistics, and the registration has not been revoked
(e) There is a court order obligating the alleged father to support the child
(f) Results of genetic testing show a 95% or higher probability of paternity
(g) Paternity is established or rebuttably presumed in an Indian territory or another state, but there is no order declaring paternity
(h) There is case evidence supporting one of the following situations **and** the CSED staff attorney has entered a SEARCHS case note approving the use of the presumption in the specific circumstances:
  (i) There is a marriage after the child is born, and the alleged father signs a written voluntary promise of child support
  (ii) There is a marriage after the child is born, and the alleged father's name is listed on the birth certificate with his consent
  (iii) The alleged father has represented the child to be his natural child.

(10) Resolving/resolution--the CSED process that causes a change in case activity status from "paternity" to "order establishment;" may be by presumption or order

(11) Single-allegation--a paternity case involving only one alleged father and no presumed fathers; or a paternity case involving one presumed father whose paternity is denied by the mother, and no other alleged or presumed fathers.

POLICY

Conditions for Case Initiation. The procedures in this section apply only when the following conditions are met:

(1) The case meets the definition of a "paternity case" given in the DEFINITIONS. Note that in cases where there is either an irrebuttable presumption or an order declaring paternity, the case is not a paternity case but a support order establishment case. This is true even if (1) there are allegations or rebuttable presumptions against other men, or (2) the obligor genetically tests negative.

(2) The child's natural mother is the obligee in the case. (When the obligee is not the natural mother but a "third party," see section CS 602.2 for case initiation procedures.)

NOTE: Proceeding for Unknown, Unlocated Allegations. The CSED does not delay in initiating a case under these procedures solely because an alleged father's name or location is not known; the name or location may be discovered during or as a result of the procedures.

Change in Case Status by Presumption or Exclusion. As the CSED obtains new presumptions, or excludes alleged or presumed fathers by genetic testing, the "paternity" status of a case may change. For example, a single-allegation case **ceases to be a paternity case** when the CSED obtains or discovers a presumption of any type for the alleged father; a multiple-allegation case becomes a single-allegation case when the CSED excludes all but one alleged or presumed father; and a multiple-allegation case ceases to be a paternity case when the CSED obtains a genetic testing presumption for one of the men in the case. Once paternity is resolved, the case is considered a support order establishment case, and the CSED proceeds as in section CS 401.3 or CS 401.6.

Information Gathering. The primary tool for initiating a paternity case is the Paternity Affidavit. This is the form the CSED uses to gather essential information from the mother relating to the paternity of the child. In addition to the Paternity Affidavit the caseworker also checks certain other sources for information about the paternity. These sources may include

- the existing case file,
- the public assistance referral or the non-public assistance application in the case,
- the CSED Paternity Clearinghouse (of hospital acknowledgments beginning in February 1994),
- the CSED Paternity Registry (of paternity orders and genetic testing results submitted by the CSED; this source is rarely used, as the cases represented are no longer in CSED paternity status)
- birth records maintained by the Montana Office of Vital Statistics (OVS),
- the Putative Father Registry (of claims of parental interest) maintained by the OVS,
- the acknowledgment registry for out-of-state births maintained by the OVS (this source is rarely used, as most of the acknowledgments in the registry were obtained and submitted by the CSED),
- further information obtained by the caseworker directly from the mother,
- other information obtained by the CSED public assistance liaison from the mother or other sources, and
- records and paternity determination procedures of another state or jurisdiction.

The order in which the caseworker administers the Paternity Affidavit and accesses these other sources depends on the facts of the case, as shown in the detailed procedures in this section. Generally the caseworker is attempting to find the most efficient way to assemble reliable information relating to (1) the identity of possible fathers, (2) any existing presumptions previously unknown to the CSED, (3) Montana's jurisdiction to establish paternity, and (4) the basis for proceeding against each alleged father. Information from other sources may repeat, support, expand, or contradict information in the completed Paternity Affidavit.

Proceeding in Multiple-Allegation Cases. In initiating a multiple-allegation case the caseworker follows the procedures in this section for **each** alleged or presumed father, heeding restrictions as noted later in this POLICY. The caseworker determines, according to the facts of the case, whether to proceed with a particular case initiation step for all of the alleged or presumed fathers, or to proceed for certain alleged or presumed fathers first, using the resulting information to determine when and if to resume case initiation for the others. (Exceptions to serial processing: (1) Paternity Affidavits are usually administered for all known alleged and presumed fathers at the same time. (2) Steps involving records searches are performed only once for each case. (3) For every located alleged or presumed father identified in a case referral or application, the CSED is required to promptly notify the man of the mother's written claim of paternity against him, regardless of whether the CSED intends to proceed further against the man at that time; see section CS 601.3 for procedures.) Note that a case may start out as a single-allegation case and **become** a multiple-allegation case (for example, the CSED may receive a completed Paternity Affidavit and find that the mother has named other possible fathers).

Opportunity for Cooperation by Alleged or Presumed Father. The procedures in this section are designed not only to gather information, but also to provide an opportunity for the alleged or presumed father to cooperate in resolving the paternity in the early stages of the process. Specifically, the CSED provides an opportunity for the alleged or presumed father

- to request genetic testing to determine the probability of paternity, or
- in single-allegation cases, to admit paternity under oath, allowing the CSED to enter a "consent" order establishing paternity based on the admission.

Either of these options eliminates the need for legal notice and hearing to resolve the paternity allegation.

Administering the Paternity Affidavit. Except as noted below the CSED sends the mother one Paternity Affidavit for each known alleged or presumed father (if any returned Affidavit names others, the CSED then sends additional Affidavits). The mother is asked in the cover ("Mama") letter to complete the Affidavit, provide her notarized signature, and return the Affidavit to the CSED within 10 calendar days.

> EXCEPTION: If the CSED discovers and confirms a presumption for the alleged father in a single-allegation case, the Paternity Affidavit is not required.

If the Affidavit is not timely returned, the CSED notifies the public assistance agency the mother has not cooperated with the CSED, or begins case closure in the non-public assistance case. (In public assistance cases where the mother is not included in the assistance benefit, the CSED "subpoenas" the completed Affidavit from the mother using the process of subpoena duces tecum, and the investigative subpoena authority, described in section CS 405.12.) Also in a public assistance case, if the returned Affidavit names men who were not included in the original referral, the CSED cannot proceed against these men until they are added to the referral electronically. If the mother does not timely provide revised information to the IV-A agency, the CSED notifies the public assistance agency the mother has not cooperated with the CSED.

Period of Conception. The Paternity Affidavit is used not only to gather evidence supporting a paternity allegation, but also to check on the biological validity of the allegation. The caseworker uses the date the child was born (or in the case of a premature or overdue birth, the date the child should have been born) to determine the probable period of conception. If the dates the mother gives in the Affidavit for sexual contact with the alleged father do not coincide with the period of conception, the allegation is dropped from the case.

To determine the starting and ending dates of the probable period of conception the caseworker counts backward 286 and 246 days, exactly, from the child's birth date. This allows for accepted ranges in both the date of fertilization and the period of gestation. Various tools are available to regions for calculating the period of conception, including the manually operated "paternity wheel" and a LOTUS spreadsheet.

NOTE: Period of Conception Not Reducible. To allow for consideration of all possible allegations (including future allegations) in the case, it is essential to enter and retain on system the **entire** period of conception, even when it appears paternity will be established based on sexual contact on a specified date.

Contact with the Alleged or Presumed Father. Upon receiving a written paternity claim from the mother, the CSED sends the notification letter required in section CS 601.3. Then, upon determining jurisdiction, the CSED initiates the paternity case by sending the "Papa letter." This non-confrontational letter informs the alleged or presumed father he has been named as the father of the child; it also explains the process of establishing paternity and the options available for resolving the allegation without legal action. The letter encloses a Consent to Genetic Testing, which offers the alleged or presumed father the opportunity to resolve the matter through voluntary genetic testing. In a single-allegation case the Papa letter also encloses an Admission of Paternity for the alleged father to sign and return, notarized, to the CSED. In multiple-allegation cases the standard Papa letter does not enclose an Admission of Paternity.

NOTE 1: Admission of Paternity in Multiple-Allegation Cases. In multiple-allegation cases the CSED will not accept an Admission before it obtains positive genetic testing results for the alleged or presumed father (see "Restrictions" later in this POLICY). If positive testing results are obtained, it will be appropriate (and desirable) **at that time** to seek an Admission. If the CSED receives a signed Admission of Paternity in a single-allegation case that **becomes** a multiple-allegation case, the Admission is not acceptable until the CSED obtains positive genetic testing results for the admitting man, **and** he signs a multiple-allegation variation of the Admission acknowledging there were other alleged or presumed fathers in the case.

NOTE 2: Concurrent Papa and Mama Processes. Because of the strict time frames affecting paternity establishment, the CSED must contact the alleged or presumed father and administer the Paternity Affidavit within the same time period. (If the returned Paternity Affidavit contains a new allegation, the CSED will send the mother an Affidavit for that man and, concurrently, will send the corresponding Papa letter.) **It is generally not appropriate to wait for return of the Affidavit to send Papa letters.**

NOTE 3: Options for Using the Papa Letter. The following options are available for the CSED's initial contact with the alleged or presumed father:

(1) Contact through the mother (single-allegation cases only)--the mother may be better able than the CSED to persuade the alleged father of the advantages of cooperation. If so, the caseworker can elect to send the Papa letter and the Admission of Paternity to the mother along with the Paternity Affidavit. A revised Mama letter then asks for assistance in delivering the Papa letter and Admission, and in obtaining the signature of the alleged father.

(2) Omitting Papa letter--in certain situations it may be necessary or advisable to forego the initial contact, and to proceed with other actions for the man according to the facts of the case. Examples of these situations (and appropriate CSED actions) are as follows:
   (a) The CSED **must** omit the Papa letter when the alleged or presumed father is under the age of 18. (Upon receipt of the returned Affidavit, proceed directly to service of process, observing the special requirements for service of minors in section CS 605.2.)
   (b) The CSED **may** omit the Papa letter when
      - there is reason to believe the alleged or presumed father will remove himself from the CSED's jurisdiction if he is informed of the paternity case (upon receipt of the returned Affidavit, proceed directly to service of process, section CS 605.2 or 605.3); or
      - it appears from the facts of the case the allegation will not be supported by the returned Affidavit (await the returned Affidavit; if action is necessary, proceed directly to service of process, section CS 605.2 or 605.3); or
      - (multiple-allegation cases only) the chances of being able to resolve the paternity without involving the alleged or presumed father are very good (attempt to resolve paternity for the other allegations; if action is finally necessary for this man, upon receipt of the returned Affidavit proceed directly to service of process, section CS 605.3).

Restrictions in Multiple-Allegation Cases. Montana statute and CSED policy allow establishment of paternity in multiple-allegation situations ONLY when one of the "RULES" listed on the following page applies. Note that voluntary genetic testing is the key to resolving a multiple-allegation case at this stage: positive genetic testing not only provides a presumption for the man tested, but also automatically excludes all other men in the paternity case. The caseworker must determine how to proceed to obtain voluntary testing from the necessary man or men in the shortest time (see "Time Frames" for resolving paternity, later in this POLICY), and must be prepared to proceed immediately to "contested case" procedures (section CS 605.3) to obtain an order for genetic testing if a necessary man will not cooperate. See section CS 604.1 for specific policy on negotiating voluntary genetic testing and payment of testing costs.

RULES FOR RESOLVING PATERNITY IN MULTIPLE-ALLEGATION CASES

The following RULES assume genetic testing will result in either a presumption (positive results) or an exclusion (negative results). The rules also assume it will be impossible to obtain positive genetic testing results for more than one man in a case. If either assumption should prove false, consult your CSED staff attorney.

RULE 1: The CSED will enter a Paternity Consent Order if either of the following applies:

(1) An AF or PF signs an Admission of Paternity (multiple-allegation version) AND the same AF or PF genetically tests positive (if there are other PFs, the order should include language overcoming the other presumptions).

(2) An AF or PF signs an Admission of Paternity (multiple-allegation version) but does not undergo genetic testing, AND all other AFs and PFs are excluded by genetic testing.*

RULE 2: If RULE 1 does not apply, the CSED will proceed with establishment of a support order (without entering a paternity order) if either of the following applies:

(1) An AF or PF genetically tests positive.

(2) One PF in the case does not undergo genetic testing AND all other AFs and PFs are excluded by genetic testing.*

RULE 3: The CSED will enter a Paternity Default Order for an AF or PF only if default conditions (failure to respond to notice or appear as ordered) apply AND all other AFs and PFs are excluded by genetic testing.* [This RULE is not applicable to case initiation procedures, except where the AF or PF defaults after a Consent to Genetic Testing.]

RULE 4 : The CSED will proceed with establishment of a support order, regardless of the status of any other allegations or presumptions in the case, if it discovers an irrebuttable presumption, or a judicial or administrative order declaring paternity. This RULE is superior to RULES 1, 2, and 3.

* **In highly unusual cases** where genetic testing is not available to exclude an AF or PF, it may be possible to exclude the AF or PF by an action in district court or—upon a determination by the CSED staff attorney based on the facts of the case—to proceed as if the AF or PF were excluded.

AF = alleged father (no presumption)
PF = presumed father (rebuttable presumption)

NOTE: Advantage of Consent to Genetic Testing. In arranging for voluntary genetic testing the caseworker should attempt to have the man sign a Consent to Genetic Testing. This removes any future requirement for a hearing under section CS 605.3, obtains the man's agreement to pay genetic testing costs, and in certain situations (see RULES) allows the CSED to enter a Paternity Default Order if the man does not appear for testing.

Voluntary Genetic Testing--Requirements of Mother. It may happen that an alleged or presumed father is willing to participate in genetic testing but the mother will not cooperate. In this situation the CSED--after making every effort to obtain her cooperation--notifies the public assistance agency the mother has not cooperated, or begins case closure proceedings in the non-public assistance case. (In public assistance cases where the mother is not included in the assistance benefit, the CSED "subpoenas" the cooperation of the mother by adaptation of the Genetic Testing Subpoena.)

Determining Jurisdiction. [The following guidance does not apply to cases where the mother or the alleged or presumed father is Native American. To determine jurisdiction in Native American cases, refer to section CS 250.1.] The CSED does not need jurisdiction to resolve paternity in non-contested cases under this section. However, in cases where application of the case facts, voluntary genetic testing, Admission of Paternity, or a combination of these is not sufficient to resolve paternity, the CSED must assert jurisdiction over an alleged or presumed father before proceeding in a "contested case" (sections CS 605.2 and 605.3) against him. The CSED has a basis for asserting jurisdiction over an alleged or presumed father if any of the following conditions applies:

(1) He is personally or by certified mail served with notice in Montana
(2) He submits to Montana jurisdiction by consent, by waiver of contest, or by entering a general appearance
(3) He resided with the child in Montana
(4) He resided in Montana and provided prenatal expenses or support for the child
(5) The child resided in Montana as a result of his acts or directives
(6) He engaged in sexual contact in Montana and the child may have been conceived by that contact
(7) There is any other basis for jurisdiction under the Montana and U.S. constitutions.

If none of the above conditions applies (the CSED has no basis for asserting jurisdiction), the CSED may attempt to create a basis by requesting the alleged or presumed father sign a waiver of jurisdiction, satisfying condition (2).

To assert jurisdiction in any of the above conditions the CSED must serve notice on the man by personal service or certified mail. Where one of the above conditions applies and the alleged or presumed father is located out of state, federal regulations **require** that the CSED assert its own jurisdiction to establish paternity whenever possible. This means the CSED must attempt to obtain service on the man directly through personal service (for example, by a sheriff) or certified mail.

Where the CSED cannot assert jurisdiction over a particular alleged or presumed father in a case, the case is referred to the state most likely to be able to assert jurisdiction over him.

Contested Case--Determining Reasonable Cause. If paternity cannot be resolved under this section, the CSED must initiate contested case actions against the appropriate men under section CS 605.2 or 605.3. To serve notice in a contested paternity case, the CSED must have "reasonable cause" to believe an alleged or presumed father **could be** the child's natural father. Generally this means there is some indication the man had sexual contact with the mother during the possible period of conception. In most cases the information on the returned Paternity Affidavit or (if applicable) the documentation establishing a presumption of paternity is sufficient to establish reasonable cause for proceeding against the man named. In questionable cases, consult the CSED staff attorney.

Time Frames. CAUTION! Federal time frames affecting paternity establishment are very strict. **The caseworker must manage all decisions and actions in this section in a way most likely to meet the following federal requirements:**

(1) If paternity is not resolved under this section, the CSED must, for each alleged or presumed father not excluded, within 90 days after the man was located, serve notice on him of both parental responsibility and financial/medical support.

(2) If paternity is resolved under this section, the CSED must, within 90 days after the man determined to be the father was located, serve notice on him of financial/medical support.

PROCEDURES

Reminder: Except where otherwise noted, the following procedures apply to the same man from beginning to end.

Caseworker

1. **System Processing.** In conjunction with the caseworking actions taken under these PROCEDURES performs the following required system processing:

   a. Upon receiving the case, and upon identifying any additional allegations, reviews the following SEARCHS screens and enters data as needed:

Screen	Required Data (partial listing)
CAP	Information for the mother, child, and AF/PF, including the relationship for all non-child participants; shows the child attached to the mother
CHL	Shows the AF/PF attached to the child; also shows the **paternity history** of the child (critical for federal reporting)

PAR	Information for the mother, child, and AF/PF re: date of birth, place of birth, address (for the AF/PF there must be a home address), and any Native American designation
PAN	The mother's maiden name, all of the mother's aliases (former married names), and any AF/PF aliases
API	The physical description of the AF/PF

If necessary in a public assistance case, consults TEAMS (various screens) for information, and enters the information on the above SEARCHS screens.

b. Whenever in steps 2 through 17 the status of a participant changes from an alleged to a presumed father, or the participant is removed from the case (by exclusion, for example), updates SEARCHS via the CHL screen and, if applicable, notifies the public assistance agency of the change in the participant's status.

c. If at any point in steps 2 through 17 paternity is resolved in the case, updates SEARCHS via the CHL screen to show the date and method of establishment, and the participant determined to be the father; if applicable, notifies the public assistance agency paternity has been established.

NOTE: CHL Screen Critical. Proper completion **and updating** of the CHL screen is essential for compliance with federal audit requirements. See the latest SEARCHS instructions for proper updating of the establishment method, the at-issue status, and other reporting-related CHL information.

2. **Preparing the Case.** Upon receipt of a public assistance referral or a non-public assistance application in a case in which paternity is at issue, prepares the case for informal or formal action by proceeding in steps 2a through 2c below.

   a. **Immediate Notification of the Alleged/Presumed Father.** Prepares and sends form CS-601.3A, Notification of Paternity Claim Letter, to the alleged or presumed father according to the procedures in section CS 601.3. (NOTE: This step may **not** be delayed for, or combined with, the father's paternity packet sent in step 3c, unless all requirements under section CS 601.3 for timeliness and confidentiality of notification can be satisfied.) Monitors for circumstances requiring the use of form CS-601.3B, Paternity Claim Follow-Up Letter, and takes action as in section CS 601.3.

   b. **Out-of-State Births.** If the child was not born in Montana, investigates whether paternity has been established by order or irrebuttable presumption in another state.
      > If so, obtains a copy of the order or other documentation for the case file, updates SEARCHS as in step 1c, and proceeds to establish the support order. END OF PATERNITY PROCESS
      > If not, identifies any rebuttable presumption created in another state, and retains the information in the file; proceeds to step 3.

NOTE 1: Montana Acknowledgments. The proper filing of the state of Montana's form, Acknowledgment of Paternity, creates a rebuttable or irrebuttable presumption of paternity in Montana, regardless of the child's place of birth.

NOTE 2: Non-U.S. Births. For purposes of paternity establishment, Canada and all U.S. territories and possessions are treated as "states." For births in foreign countries consult the CSED legal staff for possible adaptation of case initiation and subsequent procedures.

c. **Native American Jurisdiction.** If the child was born in Montana, determines whether the mother or alleged or presumed father is Native American.
   > If so, follows the procedures in section CS 250.1; returns to this section if and when Montana state jurisdiction applies.
   > If not, proceeds to step 3.

3. **Initiating the Case.** Obtains information and initiates contacts **concurrently** as follows:

   a. **Birth Records Request.** Prepares and sends to the CSED Administrative Services Bureau (ASB) form CS-602.1D, Request for Birth Records, requesting certified copies of
      - an abstract of the birth certificate;
      - any acknowledgment of paternity;
      - any withdrawal of an acknowledgment of paternity; and
      - any registration in the Putative Father Registry.

   NOTE: Completion of Request Essential. If **any** field on the Request for Birth Records is left blank, ASB will return the form to the requester for completion.

   b. **Mother's Packet.** Prepares and sends to the mother a paternity packet containing
      - Form CS-602.1A, Letter to Mother, accompanied by the CSED information sheet, "Paternity Information for Parents"
      - Form CS-602.1C, Paternity Affidavit
      - (if the alleged or presumed father resides or may reside outside Montana) Form CS-408.3C, Long Arm Jurisdiction Questionnaire.

   c. **Alleged/Presumed Father's Packet.** Prepares and sends to the alleged or presumed father a paternity packet containing
      - Form CS-602.1B, Letter to Father (appropriate version, single- or multiple-allegation)
      - Form CS-606.2F, Consent to Genetic Testing
      - (single-allegation cases only) Form CS-606.2A, Admission of Paternity and Application for Paternity Consent Order, accompanied by the CSED information sheet, "Paternity Information for Parents"

NOTE: If the case is being treated as a single-allegation case because all other alleged/presumed fathers have now been excluded by genetic testing, the "multiple-allegation" version of the Admission form, containing informed consent language, is required. In this situation the form must be adjusted to remove the reference to positive genetic testing results.

- (if the alleged or presumed father resides or may reside outside Montana) Form CS 405-5, Waiver of Personal Jurisdiction.

  NOTE: Use of Waiver Optional. Where this form is not needed because long-arm jurisdiction already applies, or where there is reason to believe the use of this form may jeopardize federal time-frame compliance or the success of paternity establishment in the case, the caseworker may elect to omit it.

NOTE: "Unknown" or Unlocated Father. If the alleged or presumed father cannot be named or cannot be located, the caseworker should proceed with applicable steps in these PROCEDURES wherever possible, in preparation for informal contact or service of process when the man is finally located.

ASB Staff

4. **Responding to Request for Birth Records.** Upon receipt of a properly completed Request for Birth Records, proceeds as follows:

   a. Accesses the automated birth records system maintained by the Montana Office of Vital Statistics (OVS), and locates the requested birth. Prints and certifies an abstract of the birth certificate. If the system indicates there is an acknowledgment, or a withdrawal of an acknowledgment, currently on file, obtains and certifies a copy of the acknowledgment or withdrawal from the CSED Paternity Clearinghouse, the OVS physical files, or both (see NOTE 1 below).

      If the birth is not found on the OVS system, informs the caseworker and
      - if the birth was very recent (within the last 90 days), keeps the request and repeats the search at a later date.
      - if the birth was not recent, returns the request.

      NOTE 1: CSED Paternity Clearinghouse of Hospital Acknowledgments. The CSED Paternity Clearinghouse contains copies of acknowledgments of paternity filed by hospitals for births on or after February 1, 1994. All other acknowledgments, and all notices of withdrawal of paternity acknowledgment, are found only in the OVS files.

      NOTE 2: Electronic Authorization Denied. In certain cases the CSED will be unable to print an abstract of a birth certificate even though the birth is found on the OVS system. Depending on the circumstances the caseworker may be required to request the birth records directly from the OVS, or there may be a delay in authorization because the OVS is in the process of officially changing the records.

NOTE 3: Notice of Intent to Claim Paternity. If at any time during a search of the OVS physical files the ASB worker discovers a Notice of Intent to Claim Paternity for the child, the worker should obtain a certified copy of the document and forward it to the caseworker as part of the return described in step 4d.

b. Checks the Montana Putative Father Registry for any registration asserting paternity of the child. (The OVS provides the CSED with a monthly print-out of the names contained in the registry.) If a registration is found, contacts the OVS and obtains a certified copy of the registration document.

c. If the caseworker has requested information on the child's parents, and there is no acknowledgment of paternity on file, completes the applicable section of the Request for Birth Records using information as available from the OVS system.

d. Within 8 working days of receiving the Request for Birth Records mails to the caseworker
   - the certified copies prepared in step 4a,
   - any registration obtained in step 4b, and
   - (except for very recent births as in step 4a) the original request form, completed as applicable and noting any records that could not be obtained.

[steps 5 and 6 deleted]

Caseworker

7. **Reviewing Birth and Paternity Records.** Upon receipt of the birth and paternity records requested in step 3a, reviews the information for any presumptions or exclusions, and adds or removes allegations or presumptions in the case as applicable. If necessary, updates SEARCHS as in step 1b. CAUTION: In the case of an acknowledgment that is less than 60 days old (and therefore still rebuttable) checks again for any notice of withdrawal before establishing a support order based on the presumption in section CS 401.3 or CS 401.6.

8. **Processing the Paternity Affidavit.** Monitors for return of the Paternity Affidavit within 10 days after the mailing date.

   a. If the Affidavit is timely returned, reviews it for completeness, determines the period of conception according to guidance in POLICY, this section, and enters the dates on SEARCHS (CHL screen). Takes **any or all** of the following steps, as indicated by the review:

      i. Returns the Affidavit to the mother, explaining where further information is required.

ii. Schedules and conducts an interview with the mother to complete the Affidavit.

iii. Contacts the CSED public assistance liaison for assistance in obtaining necessary information from the mother or other sources. (This option is used mostly in cases with "unknown" allegations, or where an in-person interview is needed in a remote location.)

iv. If the information in the Affidavit re: dates of conception and sexual contact rules out an alleged father*, removes the man from the case and updates SEARCHS as in step 1b, and

- in single-allegation cases contacts the mother about other possible allegations (or requests assistance from the liaison as in substep iii above). If other allegations are identified, proceeds as in step 8a(v) below; if no other allegations are identified, enforces cooperation as for an unreturned Affidavit (step 8b).

  NOTE: "Unknown" Allegations. An allegation against a man whose name, identity, and location are "unknown" is considered a valid allegation for the above purposes **if** the mother is willing to work with the CSED to try to identify the man.

- in multiple-allegation cases takes no further action for the removed man; proceeds (or continues) with appropriate steps for the other allegations.

* If the Affidavit contradicts an existing presumption, consults the CSED legal staff.

v. For any allegation not previously listed in the case records,

- sends a notification letter as in step 2;
- sends an additional Paternity Affidavit to the mother; in a public assistance case includes a special request to the mother to add the new allegation to the assistance application, and alerts the public assistance worker to the new allegation; if necessary, requests the assistance of the liaison as in substep iii above. Upon return of the Affidavit updates SEARCHS as in step 1a;
- sends the alleged/presumed father's paternity packet (step 3c); and
- proceeds in this section as applicable for the new allegation.

vi. If the Affidavit or other information now in the case file provides a presumption,

- in a single-allegation case, updates SEARCHS as in step 1c and proceeds directly to establishment of a support order. END OF PATERNITY PROCESS
- in a multiple-allegation case, updates SEARCHS as in step 1b and proceeds as applicable in steps 9 through 17, this section.

b. If the Paternity Affidavit is not timely returned, takes action as follows:

i. In a public assistance case notifies the assistance agency the mother has not cooperated. If the mother continues to not cooperate, and the public assistance referral remains open (or the referral closes but there is reason to complete the paternity establishment before closing the child support case), consults with the CSED legal staff and follows the procedures in section CS 405.12 for a subpoena duces tecum to compel the mother to complete and submit the Affidavit.

  ii. In a non-public assistance case, begins case closure procedures.

  EXCEPTION: In a single-allegation case with a confirmed presumption (Affidavit not required), updates SEARCHS as in step 1c and proceeds directly to establishment of a support order.

9. **Admission of Paternity.** If the alleged or presumed father returns a signed and notarized Admission of Paternity and Application for Paternity Consent Order, proceeds as follows:
   a. In a single-allegation case, updates SEARCHS as in step 1c and proceeds as in section CS 606.2, Paternity Consent Order.
   b. In a multiple-allegation case, contacts the admitting father and explains the CSED will not accept an Admission without confirmation by genetic testing; attempts to negotiate voluntary testing as in step 10.

10. **Negotiating Voluntary Genetic Testing.** If the alleged or presumed father contacts the CSED to discuss voluntary genetic testing, attempts to negotiate an agreement to voluntary testing according to the procedures and policy in section CS 604.1, Genetic Testing. If the alleged or presumed father agrees to voluntary testing, proceeds to step 11; if not proceeds to step 16.

11. **Agreement to Genetic Testing.** If the alleged or presumed father signs and returns a Consent to Genetic Testing, or agrees to voluntary genetic testing after discussion with the CSED and does not sign a Consent to Genetic Testing, follows the procedures in section CS 604.1 for scheduling, monitoring, obtaining results, and settling costs of genetic testing.

12. **Positive Genetic Testing Results.** Upon receipt of positive genetic testing results, takes concurrent actions as follows:
    a. Sends a package to the father containing
       - form CS-601.1R, Genetic Testing Results Cover Letter
       - a copy of the genetic testing results
       - form CS-606.2A, Admission of Paternity and Application for Paternity Consent Order (if an acceptable version has not already been obtained), accompanied by the CSED information sheet, "Paternity Information for Parents"

       NOTE: If the case involved multiple allegations before genetic testing, the "single-allegation" version of the Admission is **not** acceptable.

- form CS-404.6A, Financial Affidavit (optional, may be included if the father is likely to cooperate voluntarily with support order establishment; see step 12e below).

b. Sends a package to the mother containing
  - a cover letter (regional or custom) explaining the results and the next CSED actions, and, if applicable, requesting her cooperation in returning the Financial Affidavit
  - a copy of the genetic testing results
  - form CS-404.6A, Financial Affidavit (optional).

c. Sends the original genetic testing results (the entire package, including the results, the chain of custody, and the photographs) to the CSED Paternity Registry at the OALJ.

d. Updates SEARCHS and, if applicable, notifies the public assistance agency as in step 1c (does **not** send a copy of the actual testing results to the assistance agency). In multiple-allegation cases, also updates SEARCHS as in step 1b to show the exclusion of all other alleged and presumed fathers in the case.

NOTE: Confidentiality of Testing Results. The printed testing results received from the contracted testing laboratory, listing the probability of paternity and other scientific data, are **confidential**. The caseworker may give to the public assistance agency only the general information that genetic testing did or did not provide a presumption of paternity.

e. **Immediately** proceeds to establishment of a support order as in section CS 401.3 or CS 401.6.

13. **Additional Paternity-Related Steps After Positive Testing.** Following notification of the father about positive results, takes action as follows:

a. If the father signs and returns the Admission (or if an acceptable Admission has already been obtained), updates SEARCHS for the Admission as in step 1c and proceeds as in section CS 606.2, Paternity Consent Order. (NOTE: This step is applicable even after a support order is established.)

b. If the father contacts the CSED and continues to deny paternity, proceeds as in section CS 606.4, Referral to District Court. (Continues with support order establishment, step 12e, during the referral process.)

14. **Negative Genetic Testing Results.** Upon receipt of negative genetic testing results, takes actions as follows:

a. Sends a package to the man tested containing
  - a cover letter (regional or custom) explaining the results

  - a copy of the genetic testing results.

b. Sends a package to the mother containing
  - a cover letter (regional or custom) explaining the results and, if applicable, requesting the mother's cooperation in naming other allegations
  - a copy of the genetic testing results.

c. Sends the original genetic testing results (the entire package, including the results, the chain of custody, and the photographs) to the CSED Paternity Registry at the OALJ. Retains a copy for the file.

d. Updates SEARCHS and notifies the public assistance agency as in step 1b (does **not** send a copy of the actual testing results to the assistance agency--see the NOTE in step 12d). Also,
  - in a single-allegation case, reviews the case information and questions the mother about other possible allegations. If other allegations, including "unknowns," are identified, proceeds as in step 8a(v) for each new allegation. If no other allegations are identified, proceeds as in step 8b.
  - in a multiple-allegation case, retains the results in the case file as evidence excluding the man as the father, and takes no further action for the excluded man; proceeds (or continues) with the appropriate steps for the other allegations.

[step 15 deleted]

16. **Determining Jurisdiction for a Contested Case.** For cases where paternity cannot be resolved under this section, determines whether jurisdiction can be asserted based on the criteria listed in POLICY, this section. If so, proceeds to step 17.

    If not, identifies the proper responding state for an interstate referral, and proceeds as follows:

    a. If a waiver of jurisdiction was not sent with the Papa letter in step 3, prepares and sends form CS-405.5, Waiver of Personal Jurisdiction, and proceeds with an interstate referral as in step 16b. (The interstate referral may be delayed pending a response to the waiver of jurisdiction, but only to the extent the time frames for interstate compliance in the case permit.) If the waiver is returned, dismisses the interstate referral and proceeds to step 17.

    b. If a waiver of jurisdiction was sent with the Papa letter in step 3 and not returned, begins the process to refer the case to the other state for paternity establishment. Monitors for completion of the action by the other state; upon completion updates SEARCHS as in step 1c and proceeds to establishment of a support order. END OF PATERNITY PROCESS.

NOTE: Jurisdiction in Foreign Country. If jurisdiction appears to lie with a foreign country, the caseworker should consult the CSED staff attorney.

17. **Determining Reasonable Cause for a Contested Case.** Determines whether reasonable cause exists to proceed with a "contested case" against this alleged or presumed father, based on the requirements listed under "Contested Case," POLICY, this section. If it does, follows procedures in section CS 605.2 or 605.3. If it does not, either
    - removes the man from the case, updating SEARCHS as in step 1b; processes other allegations, **or**
    - retains the man as a participant in the case; attempts to obtain further information to support reasonable cause.

SUPERSEDES

CS 602.2, Case Initiation--Third-Party Obligee, February 2, 1998.

REFERENCES

Sections 40-5-231 through 40-5-237, 40-6-110 through 40-6-118, and 50-15-210, MCA.

POLICY

Applicability. The case initiation procedures in this section apply only when (1) the case meets the conditions for a "paternity case" given in section CS 602.1, Case Initiation--Mother Obligee, and (2) the obligee is not the natural mother of the child, but a third-party custodian. The third-party custodian (the obligee) may be either a custodial relative or a state agency providing foster care or adjudicated delinquent services. (Guidance on processing third-party obligee **contested cases** is provided at the end of this POLICY; specific procedures, except as noted, are the same as those in section 605.2.)

Processing Third-Party Obligee Cases. Generally, the specific PROCEDURES for initiating third-party obligee cases are the same as for "mother-obligee" cases. These procedures are given in section CS 602.1 and, unless otherwise specified, apply here as well. Likewise, the general POLICY statements in section CS 602.1 on multiple allegations, presumption, exclusion, period of conception, location, "unknown" allegations, jurisdiction, time frames, birth records, and pre-service contact of the alleged/presumed father also apply. The purpose of this section is to outline the special parameters for working with both the third-party obligee and (when possible) the natural mother to obtain information necessary to resolve paternity or establish reasonable cause for a paternity action.

Differences from Mother-Obligee Processing. There are six main differences between mother-obligee and third- party obligee case processing:

(1) Incentives for natural mother's cooperation. Because the natural mother will not receive child support payments upon establishment of paternity and a support order, and is not currently receiving public assistance benefits related to the child that could be terminated, there may be little incentive for her to cooperate in providing essential information or in submitting to genetic testing; the CSED may need to subpoena the mother's cooperation in applicable situations.

(2) Obtaining evidence of reasonable cause. Where reasonable cause is required to proceed with the case, and the CSED cannot obtain the natural mother's sworn statement (Paternity Affidavit) claiming the alleged/presumed father is the natural father, the CSED must investigate other possible sources for evidence of reasonable cause (see Reasonable Cause Determinations on following page).

Reasonable cause is required for the CSED to take any of the following actions:
(1) Enter a Paternity Consent Order prior to service of notice
(2) Enter a Paternity Default Order prior to service of notice (for default on a Consent to Genetic Testing)

(3) Issue a Notice of Parental Responsibility (NPR), and enter any subsequent orders based on the notice.

Note that for the Paternity Consent Order in (1) the CSED will have reasonable cause based on the Admission of Paternity and Application for Paternity Consent Order even without a Paternity Affidavit, **but for the Paternity Default Order in (2), reasonable cause without a Paternity Affidavit cannot be assumed**.

(3) Scheduling Genetic Testing. Because the child does not live with the natural mother, the caseworker must arrange with the obligee for the appearance of the child, and (separately) with the mother for her own appearance, at drawings for genetic testing.

(4) Genetic Testing Without Mother's Tissue Sample. If the CSED cannot obtain the mother's tissue sample, it is still possible to proceed with genetic testing using only the child's and the alleged/ presumed father's samples. With sufficient testing the CSED's contracted testing laboratory can arrive at a result where the alleged/presumed father is either excluded, or included with a high probability of paternity.

(5) Disclosing Results of Genetic Testing. The CSED may not send copies of actual genetic testing results to the obligee, because of legal restrictions concerning confidentiality.

(6) Interstate Referrals. In outgoing interstate cases where the CSED cannot obtain a Paternity Affidavit from the natural mother, it **must** proceed with the referral if there is other evidence of reasonable cause, and **may** (generally will) proceed even without it.

Reasonable Cause Determinations. Montana statute gives only two examples of acceptable evidence of reasonable cause--the mother's sworn statement, and a presumption. But, the law includes "any other reasonable cause to believe that the alleged father is the child's natural father" as an acceptable basis for a paternity action. "Reasonable cause" is defined as the knowledge of facts, actual or apparent, which is strong enough to justify a reasonable or prudent person in a particular belief. Reasonable cause must be supported by sufficient underlying facts and circumstances for the trier of fact to determine the validity of the belief.

Reasonable cause to believe a man may be the natural father of the child **may** exist when the man voluntarily pays child support, visits with the child, tells others that the child is his, buys or pays for other necessities, or otherwise performs acts or makes statements consistent with what a natural father would do under the same circumstances. **Consult the CSED staff attorney to determine if reasonable cause exists in the absence of a Paternity Affidavit or presumption.**

Differences from Mother-Obligee Processing--Contested Cases. If case initiation procedures do not resolve paternity and there is reasonable cause to proceed with the "contested case" in a third-party obligee situation, the procedures in section CS 605.2 will apply, except as follows:

(1) Genetic testing--the special genetic testing procedures described in this section will apply to third-party obligee contested cases as well.

(2) Status of the obligee in the case--in third-party obligee contested cases
- the CSED is required to send a copy of the Notice and Order for Genetic Testing Hearing to the obligee, but not to the mother;
- neither the obligee nor the mother is a party to the hearing; the CSED does not provide copies of the hearing exhibits or the hearing checklist to the obligee or the mother, unless that person will be testifying as a witness at the hearing, and needs a particular document in relation to the testimony;
- only the mother or the father (not the obligee) may request a change in the child's birth certificate upon entry of a CSED paternity order;
- both the mother and the obligee may request an order of nonpaternity if applicable; and
- the CSED will not require financial information from the obligee, upon combined service of the NPR-NOCS on the alleged/presumed father.

PROCEDURES

Caseworker

1. **Case Set-Up.** Upon receiving a case, and whenever new allegations are added or the status of any alleged/presumed father changes, updates records and takes actions as in section 602.1, Case Initiation--Mother Obligee. Specifically,
   - enters information on the SEARCHS CAP, CHL, PAR, PAN, and API screens,
   - enters SEARCHS case notes,
   - if the allegation is submitted by the mother, follows the procedures in section CS 601.3 for notification of a paternity claim, and
   - if applicable, notifies the public assistance agency.

2. **Non-Montana Births.** If the child was born outside Montana or to a Native American mother or alleged/presumed father, follows the procedures in section 602.1 for obtaining paternity information from the other state or determining Native American jurisdiction; proceeds to step 3.

3. **Case Initiation.** Obtains information and initiates contacts **concurrently** as follows:

   a. Checks SEARCHS for an open case against the mother; if found, identifies any information useful in obtaining the mother's Paternity Affidavit (step 8), or her participation in genetic testing (step 12a).
   b. Obtains birth record information as in section 602.1.
   c. Contacts the obligee (or, in foster care or adjudicated delinquent cases, the social worker or probation officer) and schedules a paternity interview for a date following the expected receipt of the information in 3b. In special cases (see section CS 602.1) contacts the CSED public assistance liaison for assistance in obtaining information from the obligee or other sources.
   d. Prepares and sends the father's paternity packet as in section 602.1.

CSED Administrative Services Bureau (ASB)

4. **Birth Records Search.** Processes the Request for Birth Records as in section 602.1.

[step 5 deleted]

Caseworker

6. **Paternity Interview.** Conducts a paternity interview with the obligee--by telephone or in person--according to the procedures in section 602.4, Paternity Interview Outline; especially notes information that may help establish reasonable cause (see POLICY). Also, if applicable and in conjunction with the interview, asks the obligee to complete and return form CS-408.3C, Long Arm Jurisdiction Questionnaire. (NOTE: The caseworker may ask the obligee, the mother (step 8), or both to furnish jurisdiction information using the Questionnaire.)

   If the paternity interview with the obligee or other information now in the case file provides a presumption,
   - in a single-allegation case, proceeds directly to establishment of a support order (a Paternity Affidavit is not required). END OF PATERNITY PROCESS
   - in a multiple-allegation case, updates SEARCHS accordingly and proceeds to the next step.

7. **Non-Cooperation.** If the obligee does not cooperate with the interview requirements (fails to attend or reschedule, or refuses to provide known information),
   - in a public assistance case notifies the assistance agency the obligee has not cooperated. If the obligee continues to not cooperate, and the public assistance referral remains open (or the referral closes but there is reason to complete the paternity establishment before closing the child support case), consults with the CSED legal staff and follows the procedures in section 405.12 for a subpoena to compel the obligee's cooperation.
   - in a non-public assistance case begins case closure procedures.

8. **Obtaining the Mother's Paternity Affidavit.** If the paternity interview with the obligee indicates the mother may be willing to complete a Paternity Affidavit, prepares and sends (directly or through the obligee) the mother's paternity packet containing
   - Form CS-602.1A, Letter to Mother
   - Form CS-602.1C, Paternity Affidavit
   - (if applicable) Form CS-408.3C, Long Arm Jurisdiction Questionnaire.

   Monitors for return of the Paternity Affidavit; if the Affidavit is not timely returned proceeds with an investigative subpoena as in step 9.

9. **Investigative Subpoena**. If the paternity interview with the obligee indicates the mother will not cooperate in completing a Paternity Affidavit, follows the procedures in section CS 405.12, Investigative Subpoena, to compel the mother to provide the

information called for in the Affidavit. If a subpoena is not possible (the mother is dead or is not located), proceeds to step 11.

10. **Processing the Returned Affidavit.** Reviews the returned Affidavit for completeness and proceeds as in section 602.1 to obtain additional information from the mother if necessary. If the mother refuses to provide the required additional information (including the names of other possible fathers if the original returned Affidavit has ruled out the alleged father in a single-allegation case), consults with the CSED legal staff concerning the feasibility of obtaining an investigative subpoena.

    If necessary, recontacts the obligee for additional information.

    If the returned Affidavit provides a presumption, proceeds as in step 6.

11. **Admission.** If the alleged/presumed father returns a signed Admission of Paternity and Application for Paternity Consent Order (single-allegation cases only), proceeds as in section CS 602.1.

12. **Genetic Testing.** If the alleged/presumed father returns a signed Consent to Genetic Testing, or contacts the CSED and discusses or agrees to voluntary genetic testing, proceeds as in section CS 602.1 **except as follows (for any that apply):**

    a. **Cooperation of the Mother.** If the alleged/presumed father agrees to genetic testing, attempts to schedule a drawing appointment for the mother. If the mother is located but is not willing to cooperate, consults the CSED staff attorney and obtains a Genetic Testing Subpoena to compel her participation as in section CS 605.2.

        i. If the mother participates (voluntarily or in response to a subpoena), schedules **separate** drawing appointments for the alleged/presumed father, the mother, and (through the obligee) the child.

        ii. If the mother does not participate (she is dead, not located, or otherwise not accessible by subpoena), informs the CSED's contracted testing laboratory that the case will be a two-sample case instead of a three-sample case. (Special testing procedures are required in two-sample cases.)

        NOTE: Use of Alternative Sample. In special situations it may be possible to proceed using a tissue sample from a relative of the mother, or to obtain a tissue sample after the mother is deceased. Supervisor assistance or approval may be required.

    b. **Default of the Alleged/Presumed Father.** If the alleged/presumed father returns a signed Consent to Genetic Testing but then fails to appear for the scheduled drawing (single-allegation cases only), **determines whether there is reasonable cause to believe the man may be the natural father of the child.**

   i. If so, follows the procedures in section CS 606.1, Paternity Default Order, and provides evidence of the reasonable cause in the application package to the OALJ.
   ii. If not, proceeds to step 13.

c. **Positive Results.** Upon receipt of positive genetic testing results, sends a letter to the **obligee** explaining the consequences of the positive results; does not send a copy of the actual results of genetic testing to the obligee. Sends a copy of the genetic testing results to the **mother** for her information.

d. **Negative Results.** Upon receipt of negative genetic testing results, sends a letter to the **obligee** explaining the consequences of the negative results; does not send a copy of the actual results of genetic testing to the obligee. Sends a copy of the genetic testing results to the **mother** for her information. In single-allegation cases also includes in the letter to the mother, the obligee, or both, a request for assistance in identifying other allegations.

e. **Order of Nonpaternity.** If requested by the mother, the obligee, the excluded man, or another state, prepares and sends to the OALJ form CS-604.1A, Order of Nonpaternity, as in CS 602.1.

IF PATERNITY IS NOT RESOLVED AT THIS POINT, AND THE ALLEGED/PRESUMED FATHER HAS NOT AGREED TO TESTING, PROCEEDS TO STEP 13.

13. **Jurisdiction for a Contested Case.** Following procedures in CS 602.1, determines whether the CSED has or can obtain jurisdiction to proceed with a contested case. If so, proceeds to step 14. If not, refers the case to the other state, or sends a Waiver of Jurisdiction, or both, as in CS 602.1.

14. **Reasonable Cause for a Contested Case.** Determines whether there is reasonable cause to believe the alleged/presumed father is the child's natural father, based on the paternity interview, the returned Paternity Affidavit, or any other facts of the case known at this time. (See Reasonable Cause Determinations, POLICY, for guidance in cases where the Paternity Affidavit is not available.)

   a. If reasonable cause exists, proceeds to section CS 605.2 and follows the procedures for establishing paternity in a contested case. If genetic testing applies, also follows the procedures in step 12a, this section.

   b. If reasonable cause cannot be shown
      - for **this** man, continues to monitor or search for information leading to reasonable cause for him, and proceeds (or continues) with other allegations in the case as in 602.1.
      - for **any** allegation,
         > in a non-public assistance case, initiates case closure procedures.

> in a public assistance case, allows the case to remain open, pending receipt of new information; periodically contacts the obligee regarding any information that may lead to reasonable cause.

SUPERSEDES

CS 602.2, Case Initiation--Third-Party Obligee, February 2, 1998.

REFERENCES

Sections 40-5-231 through 40-5-237, 40-6-110 through 40-6-118, and 50-15-210, MCA.

POLICY

Applicability. The case initiation procedures in this section apply only when (1) the case meets the conditions for a "paternity case" given in section CS 602.1, Case Initiation--Mother Obligee, and (2) the obligee is not the natural mother of the child, but a third-party custodian. The third-party custodian (the obligee) may be either a custodial relative or a state agency providing foster care or adjudicated delinquent services. (Guidance on processing third-party obligee **contested cases** is provided at the end of this POLICY; specific procedures, except as noted, are the same as those in section 605.2.)

Processing Third-Party Obligee Cases. Generally, the specific PROCEDURES for initiating third-party obligee cases are the same as for "mother-obligee" cases. These procedures are given in section CS 602.1 and, unless otherwise specified, apply here as well. Likewise, the general POLICY statements in section CS 602.1 on multiple allegations, presumption, exclusion, period of conception, location, "unknown" allegations, jurisdiction, time frames, birth records, and pre-service contact of the alleged/presumed father also apply. The purpose of this section is to outline the special parameters for working with both the third-party obligee and (when possible) the natural mother to obtain information necessary to resolve paternity or establish reasonable cause for a paternity action.

Differences from Mother-Obligee Processing. There are six main differences between mother-obligee and third- party obligee case processing:

(1) Incentives for natural mother's cooperation. Because the natural mother will not receive child support payments upon establishment of paternity and a support order, and is not currently receiving public assistance benefits related to the child that could be terminated, there may be little incentive for her to cooperate in providing essential information or in submitting to genetic testing; the CSED may need to subpoena the mother's cooperation in applicable situations.

(2) Obtaining evidence of reasonable cause. Where reasonable cause is required to proceed with the case, and the CSED cannot obtain the natural mother's sworn statement (Paternity Affidavit) claiming the alleged/presumed father is the natural father, the CSED must investigate other possible sources for evidence of reasonable cause (see Reasonable Cause Determinations on following page).

Reasonable cause is required for the CSED to take any of the following actions:
(1) Enter a Paternity Consent Order prior to service of notice
(2) Enter a Paternity Default Order prior to service of notice (for default on a Consent to Genetic Testing)

(3) Issue a Notice of Parental Responsibility (NPR), and enter any subsequent orders based on the notice.

Note that for the Paternity Consent Order in (1) the CSED will have reasonable cause based on the Admission of Paternity and Application for Paternity Consent Order even without a Paternity Affidavit, **but for the Paternity Default Order in (2), reasonable cause without a Paternity Affidavit cannot be assumed**.

(3) Scheduling Genetic Testing. Because the child does not live with the natural mother, the caseworker must arrange with the obligee for the appearance of the child, and (separately) with the mother for her own appearance, at drawings for genetic testing.

(4) Genetic Testing Without Mother's Tissue Sample. If the CSED cannot obtain the mother's tissue sample, it is still possible to proceed with genetic testing using only the child's and the alleged/ presumed father's samples. With sufficient testing the CSED's contracted testing laboratory can arrive at a result where the alleged/presumed father is either excluded, or included with a high probability of paternity.

(5) Disclosing Results of Genetic Testing. The CSED may not send copies of actual genetic testing results to the obligee, because of legal restrictions concerning confidentiality.

(6) Interstate Referrals. In outgoing interstate cases where the CSED cannot obtain a Paternity Affidavit from the natural mother, it **must** proceed with the referral if there is other evidence of reasonable cause, and **may** (generally will) proceed even without it.

Reasonable Cause Determinations. Montana statute gives only two examples of acceptable evidence of reasonable cause--the mother's sworn statement, and a presumption. But, the law includes "any other reasonable cause to believe that the alleged father is the child's natural father" as an acceptable basis for a paternity action. "Reasonable cause" is defined as the knowledge of facts, actual or apparent, which is strong enough to justify a reasonable or prudent person in a particular belief. Reasonable cause must be supported by sufficient underlying facts and circumstances for the trier of fact to determine the validity of the belief.

Reasonable cause to believe a man may be the natural father of the child **may** exist when the man voluntarily pays child support, visits with the child, tells others that the child is his, buys or pays for other necessities, or otherwise performs acts or makes statements consistent with what a natural father would do under the same circumstances. **Consult the CSED staff attorney to determine if reasonable cause exists in the absence of a Paternity Affidavit or presumption.**

Differences from Mother-Obligee Processing--Contested Cases. If case initiation procedures do not resolve paternity and there is reasonable cause to proceed with the "contested case" in a third-party obligee situation, the procedures in section CS 605.2 will apply, except as follows:

(1) Genetic testing--the special genetic testing procedures described in this section will apply to third-party obligee contested cases as well.

(2) Status of the obligee in the case--in third-party obligee contested cases
  - the CSED is required to send a copy of the Notice and Order for Genetic Testing Hearing to the obligee, but not to the mother;
  - neither the obligee nor the mother is a party to the hearing; the CSED does not provide copies of the hearing exhibits or the hearing checklist to the obligee or the mother, unless that person will be testifying as a witness at the hearing, and needs a particular document in relation to the testimony;
  - only the mother or the father (not the obligee) may request a change in the child's birth certificate upon entry of a CSED paternity order;
  - both the mother and the obligee may request an order of nonpaternity if applicable; and
  - the CSED will not require financial information from the obligee, upon combined service of the NPR-NOCS on the alleged/presumed father.

PROCEDURES

Caseworker

1. **Case Set-Up.** Upon receiving a case, and whenever new allegations are added or the status of any alleged/presumed father changes, updates records and takes actions as in section 602.1, Case Initiation--Mother Obligee. Specifically,
   - enters information on the SEARCHS CAP, CHL, PAR, PAN, and API screens,
   - enters SEARCHS case notes,
   - if the allegation is submitted by the mother, follows the procedures in section CS 601.3 for notification of a paternity claim, and
   - if applicable, notifies the public assistance agency.

2. **Non-Montana Births.** If the child was born outside Montana or to a Native American mother or alleged/presumed father, follows the procedures in section 602.1 for obtaining paternity information from the other state or determining Native American jurisdiction; proceeds to step 3.

3. **Case Initiation.** Obtains information and initiates contacts **concurrently** as follows:

   a. Checks SEARCHS for an open case against the mother; if found, identifies any information useful in obtaining the mother's Paternity Affidavit (step 8), or her participation in genetic testing (step 12a).
   b. Obtains birth record information as in section 602.1.
   c. Contacts the obligee (or, in foster care or adjudicated delinquent cases, the social worker or probation officer) and schedules a paternity interview for a date following the expected receipt of the information in 3b. In special cases (see section CS 602.1) contacts the CSED public assistance liaison for assistance in obtaining information from the obligee or other sources.
   d. Prepares and sends the father's paternity packet as in section 602.1.

CSED Administrative Services Bureau (ASB)

4. **Birth Records Search.** Processes the Request for Birth Records as in section 602.1.

[step 5 deleted]

Caseworker

6. **Paternity Interview.** Conducts a paternity interview with the obligee--by telephone or in person--according to the procedures in section 602.4, Paternity Interview Outline; especially notes information that may help establish reasonable cause (see POLICY). Also, if applicable and in conjunction with the interview, asks the obligee to complete and return form CS-408.3C, Long Arm Jurisdiction Questionnaire. (NOTE: The caseworker may ask the obligee, the mother (step 8), or both to furnish jurisdiction information using the Questionnaire.)

   If the paternity interview with the obligee or other information now in the case file provides a presumption,
   - in a single-allegation case, proceeds directly to establishment of a support order (a Paternity Affidavit is not required). END OF PATERNITY PROCESS
   - in a multiple-allegation case, updates SEARCHS accordingly and proceeds to the next step.

7. **Non-Cooperation.** If the obligee does not cooperate with the interview requirements (fails to attend or reschedule, or refuses to provide known information),
   - in a public assistance case notifies the assistance agency the obligee has not cooperated. If the obligee continues to not cooperate, and the public assistance referral remains open (or the referral closes but there is reason to complete the paternity establishment before closing the child support case), consults with the CSED legal staff and follows the procedures in section 405.12 for a subpoena to compel the obligee's cooperation.
   - in a non-public assistance case begins case closure procedures.

8. **Obtaining the Mother's Paternity Affidavit.** If the paternity interview with the obligee indicates the mother may be willing to complete a Paternity Affidavit, prepares and sends (directly or through the obligee) the mother's paternity packet containing
   - Form CS-602.1A, Letter to Mother
   - Form CS-602.1C, Paternity Affidavit
   - (if applicable) Form CS-408.3C, Long Arm Jurisdiction Questionnaire.

   Monitors for return of the Paternity Affidavit; if the Affidavit is not timely returned proceeds with an investigative subpoena as in step 9.

9. **Investigative Subpoena**. If the paternity interview with the obligee indicates the mother will not cooperate in completing a Paternity Affidavit, follows the procedures in section CS 405.12, Investigative Subpoena, to compel the mother to provide the

information called for in the Affidavit. If a subpoena is not possible (the mother is dead or is not located), proceeds to step 11.

10. **Processing the Returned Affidavit.** Reviews the returned Affidavit for completeness and proceeds as in section 602.1 to obtain additional information from the mother if necessary. If the mother refuses to provide the required additional information (including the names of other possible fathers if the original returned Affidavit has ruled out the alleged father in a single-allegation case), consults with the CSED legal staff concerning the feasibility of obtaining an investigative subpoena.

    If necessary, recontacts the obligee for additional information.

    If the returned Affidavit provides a presumption, proceeds as in step 6.

11. **Admission.** If the alleged/presumed father returns a signed Admission of Paternity and Application for Paternity Consent Order (single-allegation cases only), proceeds as in section CS 602.1.

12. **Genetic Testing.** If the alleged/presumed father returns a signed Consent to Genetic Testing, or contacts the CSED and discusses or agrees to voluntary genetic testing, proceeds as in section CS 602.1 **except as follows (for any that apply):**

    a. **Cooperation of the Mother.** If the alleged/presumed father agrees to genetic testing, attempts to schedule a drawing appointment for the mother. If the mother is located but is not willing to cooperate, consults the CSED staff attorney and obtains a Genetic Testing Subpoena to compel her participation as in section CS 605.2.

        i. If the mother participates (voluntarily or in response to a subpoena), schedules **separate** drawing appointments for the alleged/presumed father, the mother, and (through the obligee) the child.

        ii. If the mother does not participate (she is dead, not located, or otherwise not accessible by subpoena), informs the CSED's contracted testing laboratory that the case will be a two-sample case instead of a three-sample case. (Special testing procedures are required in two-sample cases.)

        NOTE: Use of Alternative Sample. In special situations it may be possible to proceed using a tissue sample from a relative of the mother, or to obtain a tissue sample after the mother is deceased. Supervisor assistance or approval may be required.

    b. **Default of the Alleged/Presumed Father.** If the alleged/presumed father returns a signed Consent to Genetic Testing but then fails to appear for the scheduled drawing (single-allegation cases only), **determines whether there is reasonable cause to believe the man may be the natural father of the child.**

  - i. If so, follows the procedures in section CS 606.1, Paternity Default Order, and provides evidence of the reasonable cause in the application package to the OALJ.
  - ii. If not, proceeds to step 13.

c. **Positive Results.** Upon receipt of positive genetic testing results, sends a letter to the **obligee** explaining the consequences of the positive results; does not send a copy of the actual results of genetic testing to the obligee. Sends a copy of the genetic testing results to the **mother** for her information.

d. **Negative Results.** Upon receipt of negative genetic testing results, sends a letter to the **obligee** explaining the consequences of the negative results; does not send a copy of the actual results of genetic testing to the obligee. Sends a copy of the genetic testing results to the **mother** for her information. In single-allegation cases also includes in the letter to the mother, the obligee, or both, a request for assistance in identifying other allegations.

e. **Order of Nonpaternity.** If requested by the mother, the obligee, the excluded man, or another state, prepares and sends to the OALJ form CS-604.1A, Order of Nonpaternity, as in CS 602.1.

IF PATERNITY IS NOT RESOLVED AT THIS POINT, AND THE ALLEGED/PRESUMED FATHER HAS NOT AGREED TO TESTING, PROCEEDS TO STEP 13.

13. **Jurisdiction for a Contested Case.** Following procedures in CS 602.1, determines whether the CSED has or can obtain jurisdiction to proceed with a contested case. If so, proceeds to step 14. If not, refers the case to the other state, or sends a Waiver of Jurisdiction, or both, as in CS 602.1.

14. **Reasonable Cause for a Contested Case.** Determines whether there is reasonable cause to believe the alleged/presumed father is the child's natural father, based on the paternity interview, the returned Paternity Affidavit, or any other facts of the case known at this time. (See Reasonable Cause Determinations, POLICY, for guidance in cases where the Paternity Affidavit is not available.)

    a. If reasonable cause exists, proceeds to section CS 605.2 and follows the procedures for establishing paternity in a contested case. If genetic testing applies, also follows the procedures in step 12a, this section.

    b. If reasonable cause cannot be shown
    - for **this** man, continues to monitor or search for information leading to reasonable cause for him, and proceeds (or continues) with other allegations in the case as in 602.1.
    - for **any** allegation,
      - > in a non-public assistance case, initiates case closure procedures.

> in a public assistance case, allows the case to remain open, pending receipt of new information; periodically contacts the obligee regarding any information that may lead to reasonable cause.

SUPERSEDES

CS 602.4, Paternity Interview Outline, January 11, 1998.

REFERENCES

Sections 40-5-232 and 40-5-233, MCA.

POLICY

Purpose and Format of Paternity Interview. The main purpose of the paternity interview is to obtain information that will help the CSED resolve paternity in the case, or determine whether resolution is likely. Facts gathered at the interview may be used to take the next step in the case or to establish reasonable cause. A secondary purpose is to enlist the cooperation of one of the participants in the case. A paternity interview may be conducted by telephone or in person and may be scheduled or impromptu; the interview may occur at any time during the paternity establishment process, but generally is most useful during case initiation; the interviewee may be the mother, the third-party obligee, or (prior to any request for hearing) the alleged or presumed father.

The paternity interview is optional, and is conducted by the caseworker or, in certain types of cases, by the CSED public assistance liaison. The caseworker determines whether an interview is necessary by considering the facts of the case, and assessing the need for further information or improved cooperation from a participant. The following paragraphs give the most common considerations in electing to interview a participant; there are, however, many exceptions, and regional variations also apply.

Interview with Mother. Most paternity interviews are with the mother, since she is the person most likely to have any information still lacking, and (when she is the obligee) most likely to be willing to attend an interview. Specifically, the CSED may seek an interview with the mother (1) to address some apparent discrepancy or gap in the information provided in the Paternity Affidavit, (2) to obtain another allegation in the case, if a single or last remaining allegation has been excluded, or (3) if she is not the obligee, to persuade her to cooperate in the paternity establishment process. Generally a paternity interview with the mother is held in person, and scheduled ahead of time; telephone interviews for short questions or with out-of-state mothers are also common.

Interview with Third-Party Obligee. In third-party obligee cases a paternity interview with the custodial party or social worker is standard practice, because of the many possible fact situations. The interview may be omitted, however, if all the necessary information can be obtained from the application or referral, or from the mother. Logistics (scheduling; telephone versus in-person) depend on the obligee's and interviewer's needs.

Interview with Alleged/Presumed Father. Except for short telephone conversations as opportunities arise, paternity interviews with the alleged/presumed father prior to a request for hearing are not common. However, depending on the facts of the case the caseworker may seek an interview (or ask the public assistance liaison to do so) during the case initiation stage to gain the man's cooperation in some specific area (for example, to obtain his consent to genetic testing in a multiple-allegation case). The interview is by telephone unless the alleged/presumed father requests an in-person meeting. IMPORTANT: Procedures for a mandatory interview with the alleged/presumed father following a request for hearing are given separately in section CS 605.2.

Interview by CSED Public Assistance Liaison. In certain cases the CSED public assistance liaison may be in a better position than the caseworker to pursue and obtain paternity-related information. In these situations the caseworker contacts the liaison for assistance in developing the case facts. Generally, these cases involve allegations against "unknown" men, or against men not named in the public assistance referral; however, liaisons may also be asked to conduct interviews in cases where the mother or custodian is not available for an interview with the caseworker (because of geographical limitations, for example). Use of the liaison in other situations may also be appropriate, depending on case facts and regional policy. Usually, the main advantages of involving the liaison in a paternity case are that he or she can be available at locations remote from the regional office (county public assistance offices, for example), and can devote time and resources to specialized in-depth interviews and follow-up investigations at the local level.

Also, the liaison may conduct pre-referral interviews at the request of the public assistance agency to identify alleged fathers listed as "unknowns" in assistance cases. The goal is to minimize, to the extent possible, the number of "unknown" fathers referred to the CSED.

PROCEDURES

The following procedures are intended to help the caseworker (or liaison) focus the interview by outlining subject areas that **may** be pertinent to the case. The lists provided are not mandatory checklists, nor are they exhaustive. The interviewer must determine the content of each interview according to the needs and the facts of the case.

NOTE: In steps 1 through 3, the word "you" refers to the person being interviewed.

Caseworker or Liaison

1. **Interview with Mother.** As needed, schedules and conducts an in-person paternity interview with the mother (see POLICY for situations where a telephone interview applies). Thoroughly documents the conversation for the file, and gives the mother an opportunity to ask questions.

   a. Explains the paternity establishment process, specifically,
      - Why the CSED is involved
      - The benefits of establishing paternity
      - The possibility of genetic testing, and what is involved
      - You may be called on to testify in court
      - The CSED attorney does not represent you; you may obtain an attorney of your own if you desire
      - Why we need your cooperation in the paternity establishment process

- Why we need detailed information about your relationship with the alleged father, and the exact dates of the relationship

b. Obtains information regarding the pregnancy, the birth of the child, and the mother's relationship with the alleged or presumed father; **explains that the term "sexual contact" means any act that could have resulted in the conception of the child;** specifically,
  - Where and when you and he met (specifics)
  - Did you and he date? Where did you go? How old were you both? Who were you with when you were together? Did your parents or his parents know about the relationship? Did the alleged father come to your home? Names and addresses of friends or relatives that knew about your relationship.
  - When and where did you first have sexual contact? Why do you remember? Exact date or approximate? Describe circumstances, use of birth control.
  - How often did you have sexual contact? Where did it occur? Identity of hotels or motels, details of occupancy, manner of registration; dates. Did you live together? Where and how long?
  - Did anyone else know you and he were having sexual contact? Could anyone else infer sexual contact, or know you spent the night with him? Names, addresses, how they knew.
  - What was the date of your last period before pregnancy? Is this an exact date or a guess? How do you remember?
  - What was the date of conception? Is this an exact date or a guess? How do you remember?
  - Did you have sexual contact with anyone else, other than the alleged father, during the period of conception? One night stands? Do you think the father will allege you had sexual contact with someone else? If so, give details.
  - How and when did you discover you were pregnant? When did you tell the alleged father? What was his response (exact words, as specific as possible). Was anyone else present? Names and addresses. Did you date the alleged father after you were pregnant? Did the alleged father admit or deny he was the father to anyone else? Names and addresses. Did you have sexual contact after becoming pregnant? Name of doctor you saw during pregnancy. Did you tell the alleged father's parents? When, where, what did they say?
  - Where was the baby delivered? What was the baby's weight at birth? anticipated due date? actual birth date? Did the alleged father visit you in the hospital? How many times? How long did he stay? What did he say (be specific)? Was anyone else there? Names and addresses. Were there any gifts from him or his parents? Describe.
  - After you left the hospital, when was the next time you saw the alleged father? Describe what happened. Did you and he date? Has he seen or visited the baby? What has been his reaction? Has he sent any gifts or money? Are there any witnesses to the gifts or money? Names and addresses.
  - Does the child resemble the alleged father? How? Compare physical characteristics, color of eyes, hair, anything that might be genetically transferred to the child.

- When was the last time you saw the alleged father? Where, when, what was said?
- Is there anything else that might have happened or may be pertinent?

c. Reviews the Paternity Affidavit and asks for any information that was not completed initially or obtained in the interview; if necessary, asks the mother to complete and sign a new Affidavit, or a statement supplementing the existing Affidavit, and has the Affidavit or statement notarized. (Most additional information will not require a formal change to the Affidavit, but will simply clarify points for the caseworker's use.)

d. Asks for any further information regarding the alleged father's employment, financial condition, address and phone number, and any other useful information regarding his ability to pay support.

e. Obtains from the mother or requests she produce the following documents:

- A medical release for information from the hospital or doctor
- Any photos showing the child and alleged father together
- Letters or written documents containing statements by the alleged father possibly supporting this claim of paternity
- Descriptions of gifts and other non-monetary benefits supplied or provided by the alleged father
- Financial data to establish the child's need for support and the mother's ability or lack of ability to provide her share of the child's needs
- Copies of the child's birth records
- Any other item that may be useful in proving paternity or the need for support.

2. **Interview with Alleged/Presumed Father.** As needed, prior to any request for hearing, conducts an interview with the alleged or presumed father to obtain information necessary for the paternity case. Explains the paternity establishment process, including the role of genetic testing; elicits information as needed; gives the alleged/presumed father an opportunity to ask questions; and thoroughly documents the conversation for the file, noting any statements that may be used as evidence at hearing (see section CS 602.5). (NOTE: Partial interviews focusing on specific points may be appropriate.)

3. **Interview with Third-Party Obligee.** As needed, schedules and conducts a paternity interview, in person or by telephone, with the third-party obligee (custodial party, social worker, or other appropriate person); thoroughly documents the conversation for the file, and gives the obligee an opportunity to ask questions.

   a. If necessary, explains the paternity establishment process, as in step 1a.

b. Obtains any information known to the obligee--and not yet obtained from the mother--regarding the mother's pregnancy, the birth of the child, or the mother's relationship with the alleged or presumed father as in step 1b.

c. Reviews the Paternity Affidavit form and asks for any information not yet received; particularly questions the obligee about the possible existence of a presumption (see section CS 602.1 for the definition of "presumption").

d. If the mother's Paternity Affidavit does not provide a basis for reasonable cause (the Affidavit is not available, or the information is insufficient), specifically questions the obligee for relevant information (see section CS 602.2 for further discussion of reasonable cause).

e. If applicable, questions the obligee regarding the possible cooperation of the mother in the paternity establishment process.

f. If no allegations are available from the mother, or if there is reason to believe the mother's information is not complete, questions the obligee regarding the existence of other possible fathers.

g. Asks for any further information regarding the alleged father as in step 1d.

h. Obtains, or requests assistance in obtaining, the documents listed in step 1e.

PATERNITY ESTABLISHMENT
Evidence at Hearing

CS 602.5

SUPERSEDES

CS 602.5, Evidence at Hearing, September 30, 1995.

REFERENCES

Sections 40-5-233 and 40-6-105, MCA.

POLICY

Role of Evidence in Paternity Case. If paternity cannot be established informally and the case is set for hearing under section CS 605.2, the CSED will be required to produce "testimony and any other supplementary evidence" demonstrating (1) a reasonable probability the alleged or presumed father had sexual contact with the child's mother during the probable period of conception, or (2) in multiple-allegation cases only, a probable existence of a presumption. If this evidence is satisfactory, the hearing officer will order genetic testing, and the CSED can proceed on the basis of the testing results to resolve paternity for the alleged or presumed father in question.

Preparing Evidence for Hearing. Generally the CSED depends on the mother's Paternity Affidavit, supported by live testimony from the mother, for evidence of the probability or presumption required. If there is any chance the alleged/presumed father will claim the mother's Paternity Affidavit is false, the CSED must be prepared to present documents or testimony corroborating the mother's sworn statements, refuting the alleged/presumed father's counter-claims, or giving additional evidence of a presumption or the probability of sexual contact.

Generally the areas contested or raised at hearing--and in which evidence may be needed--are as follows:

(1) The probable period of conception (evidence would include the date of birth of the child and whether the birth was late, premature, or on time); the place of conception
(2) The physical possibility/impossibility of the alleged father's having fathered the child (medical, geographical)
(3) The child's resemblance to the alleged/presumed father
(4) The relationship of the mother with the alleged/presumed father during the probable period of conception
(5) (multiple-allegation cases only) The existence of a legal presumption
(6) Any actions or statements of the alleged/presumed father indicating he believes he is or may be the natural father.

If it appears further information may be needed or helpful in any of these areas to corroborate the evidence of the mother, the CSED investigates possible sources and arranges for presentation at hearing--through testimony or documents--of any evidence discovered.

Actions or Statements of Alleged/Presumed Father. Certain actions or statements by the alleged/presumed father--sometimes called "admissions"--when offered as evidence by the CSED, can help to support the claim he could be the natural father of the child. Some of the more likely statements and actions of this nature are as follows:

(1) Promises to pay support
(2) Visits to mother while in hospital
(3) Suggestions of, offer to pay for abortion
(4) Payment of expenses, gifts of money
(5) Providing transportation to or from hospital, clinic, doctor
(6) Buying baby food, clothes, diapers, etc.
(7) Gifts to child--birthday, Christmas, other
(8) Payment of medical or hospital bills
(9) Being photographed with child
(10)Taking photographs of child
(11)Requesting photograph of child from mother
(12)Writings (correspondence, love letters, birthday cards, etc.) admitting or inferring paternity
(13)Visits to child, holding or playing with child
(14)Referring to child as his ("my son").

NOTE: Omissions by Alleged/Presumed Father. If an alleged/presumed father makes no comment, or does not deny paternity, when a remark is made in conversation stating or implying the child is his ("your baby," "your little boy/girl"), this "omission" may be used in evidence in the same way as a positive statement or action claiming paternity.

Testimony of Witnesses. A witness may be any person having direct knowledge relating to an area to be raised at hearing. Depending on the issue, a witness may be a friend, relative, neighbor, acquaintance, classmate, or coworker of the mother or alleged/presumed father; a person connected to the issue in a professional capacity (doctor, local registrar); or a person not connected to anyone in the case who happened to be in a position to witness an event or situation relating to the paternity at issue. Important witnesses are often those who can testify to facts about the relationship or to statements or actions of the alleged/presumed father indicating paternity. In certain situations, even the impressions of a witness as to the type of relationship that existed, or the meaning of a particular statement at the time it was made, may be accepted as evidence.

Documents in Evidence. Documents commonly used in evidence of paternity are photographs (showing a father-child resemblance, or showing the man and child together); letters written by the alleged/presumed father; the mother's personal calendar showing menstrual cycle dates; sworn statements of persons who witnessed relevant events; and official documents from doctors, hospitals, institutions, or employers relating to the child's birth, the alleged/presumed father's whereabouts at the time of conception, or his medical condition.

PROCEDURES

Caseworker

1. At any time after initiating a paternity case and before attending and appearing as a witness at a genetic testing hearing, documents any statements made by the alleged/

presumed father indicating he may be the natural father.

CSED Customer Service Representative

2. Upon receiving a telephone call from a man identifiable as a participant in a CSED paternity case, documents any statements made by him indicating he may be the natural father of the child (see Actions or Statements, POLICY).

Caseworker

3. Upon receiving a notice of hearing in the paternity case, reviews the file for the strength of the CSED's evidence in all relevant areas. If it appears further evidence may be needed to establish a reasonable probability of sexual contact (or to establish a presumption, in a multiple-allegation case), takes action as follows:
   a. Identifies and contacts possible witnesses and, if suitable evidence is discovered, arranges for their testimony at hearing. Testimony may be live or by deposition.
   b. Identifies possible sources of relevant documents and, if suitable evidence is discovered, arranges for production of the documents at hearing.

   (See section CS 605.2 for use of subpoenas, discovery deadlines, etc.)

4. Consults with the CSED staff attorney on any questions concerning the use of evidence at hearing, especially on issues of corroboration of testimony and strength of evidence.

SUPERSEDES

CS 604.1, Genetic Testing, January 11, 1998

REFERENCES

Sections 40-5-232 through 40-5-235, MCA.

POLICY

Purpose and Applicability. The procedures in this section apply when negotiation or scheduling of genetic testing is indicated during initiation of the paternity case (section CS 602.1) or subsequent to notice of parental responsibility (section CS 605.2).

Negotiations with Alleged/Presumed Father. In many cases, before genetic testing is ordered by a Genetic Testing Subpoena, the caseworker will have an opportunity to discuss the advantages of voluntary testing with the alleged/presumed father. These discussions may occur before or after the CSED issues the Notice of Parental Responsibility, and are **extremely important in expediting the case**. Procedures in this section cover negotiation of the three main testing issues--participation, written agreement, and cost recovery--and give the major negotiating points caseworkers may use to obtain cooperation.

CSED Contracted Testing Laboratory. The CSED contracts with a national testing laboratory for genetic testing services; this laboratory in turn arranges with individual facilities in and outside Montana to perform the actual tissue sampling, and to identify, package, and mail the samples to the laboratory for testing. The laboratory sets up appointments for the mother and child and the alleged/presumed father at the facilities closest to the participants' geographical locations. Some CSED regional offices also have agreements with individual phlebotomists or other medical technicians to perform tissue sampling at the regional office. Appointments with these on-site technicians are scheduled directly by the region, and the technician then functions as another “facility” for the laboratory.

The laboratory maintains an automated system that tracks the drawing, handling, and testing of the tissue samples in each case. On-line access to the system is available at CSED regional offices; caseworkers can check the system directly for the date each sample in the case was drawn, the date each sample was received at the laboratory, the date(s) all the samples in the case were tested, the date the final report was shipped, and the results of testing in terms of numerical inclusion or exclusion.

Recovery of Testing Fees. Under the terms of the CSED's contract, the CSED pays the laboratory for testing only if results are received within 30 days after the last tissue sampling; later results are not payable. Also under the contract, the total fee for a two-sample case (a case where one of the participants is deceased or otherwise unavailable) may not exceed the total fee for a regular, three-sample case.

The CSED seeks reimbursement for the testing costs from the man found to be the father. (If a man is excluded by genetic testing, he is not liable for testing charges.) When positive results are received for one of the men tested in the case, the CSED requires that man to pay the testing costs incurred for the mother, the child(ren), and himself. The CSED can, in its discretion, waive recovery of testing fees. Fees may be waived **only before testing**, and **only under the following conditions:**

> Single-Allegation Cases. Costs may be waived **only with the supervisor's approval.** Approval should be based on some evidence the man would be unable to pay the amount of the charges, even in installments (for example, the man has limited or no income and no ability to earn income). If costs are waived the caseworker may seek a signed Consent to Genetic Testing that omits the cost language (to allow for a default action later on, if no NPR has been served), or may proceed without a signed consent.

> Multiple-Allegation Cases. Genetic testing costs may be waived without supervisor approval if both of the following conditions apply:

(1) The caseworker has made a best effort to obtain a signed Consent to Genetic Testing with costs, and the alleged/presumed father has shown he will not be persuaded.

(2) The waiver would act as a negotiating tool that would allow for definite progress in the case (for example, voluntary testing could reduce the multiple-allegation case to a single-allegation case).

(Note that avoiding the cost of service or hearing is not a sufficient basis for waiving testing costs in **any** case.)

If costs are not waived, the CSED can either (a) issue an order that enters an automatic judgment if the man is found to be the father (this requires a signed Consent to Genetic Testing or an NPR hearing--see PROCEDURES), or (b) schedule the testing without an order for costs, with the intention of attempting to recover costs through a judgment at a later date. With the latter option, the caseworker must be **careful not to imply** that costs are being waived.

Genetic Testing--Scientific Basis and Procedures. Genetic paternity testing is based on the principle that all persons inherit two sets of genes. One of these sets is inherited from the mother and the other from the father. These inherited characteristics are known as genetic markers. If a genetic marker is found in the child, but not in the mother, it must come from the father. If the alleged father does not have such a genetic marker, he is excluded as the biological father. When the alleged father has all the markers required to be the father, he cannot be excluded. Thereafter, a statistical probability of paternity can be calculated based on the likelihood that the same marker patterns will occur in the general population.

To perform genetic testing the laboratory needs genetic material from the person being tested. The tissue most often used for this purpose is epithelial cheek cells, although blood or other tissue can also be used. Cheek cells are generally preferred because they can be collected using a non-invasive procedure called a buccal swab.

The laboratory performs DNA testing on the tissue sample to identify the person's genetic markers.DNA testing will either (1) exclude the alleged/presumed father (when one or more genetic markers are found in the child's tissue that are not present in the genetic material of either the mother or the alleged/presumed father) or (2) establish a probability of 95% or greater that the alleged/presumed father is the child's natural father.

Legal Consequences and CSED Weight of Genetic Testing Results. Under section 40-5-234, MCA, positive testing results (a probability of paternity greater than or equal to 95%) create a legal presumption of paternity for the man tested. The CSED uses this rebuttable presumption as a basis for establishing paternity for that man. Furthermore, if there are other allegations or rebuttable presumptions in the case, these **other men are automatically excluded** by the positive results that created the presumption.

Also under 40-5-234, where genetic testing results show conclusively the man tested could not be the father, the CSED must exclude that man as father even if there is a rebuttable presumption in favor of his paternity.

PROCEDURES

Procedures 1 through 4 apply to voluntary testing only, before or after the NPR is served.

CAUTION: In third-party obligee cases see section CS 602.2 for proper procedures in all steps specifically referring to the "mother" below.

Caseworker

1. **Contact Concerning Genetic Testing.** Upon being contacted by (or upon contacting) the alleged or presumed father concerning genetic testing, discusses the advantages of voluntary testing and explains the procedures involved. Advantages specifically applicable to the case may include one or more of the following:

   EXCEPTION: If "contact" is the return of the Consent to Genetic Testing, skip to step 3.

   (1) Produces definite information about the paternity of the child. Genetic testing will result in conclusive scientific evidence that either excludes the man as father or shows a probability of 95% or higher the man is the father.
   (2) Removes requirement for notice (if NPR not yet served). If the alleged/presumed father does not agree to testing, the CSED will initiate legal action by serving on him formal notice of parental responsibility.
   (3) Avoids formal hearing. If the alleged/presumed father does not agree to voluntary testing he will be ordered to appear for hearing; the Administrative Law Judge can

order testing if there is any reason to believe the man could be the child's father.

(4) Allows CSED to enter paternity order based on father's consent (multiple-allegation cases). If the alleged/ presumed father in a multiple-allegation case has signed an Admission of Paternity, the Admission has no effect without confirmation by genetic testing.

(5) (Applicable cases only) Is available at no cost. The CSED can waive testing costs if the alleged/presumed father participates voluntarily; if he does not, the CSED will **order** genetic testing and will require him to pay the testing costs if he is found to be the father.

CAUTION: This option is not standard procedure; it is available only under very strict conditions--see Recovery of Testing Fees, POLICY.

2. **Obtaining a Written Consent to Genetic Testing.** Acts on the results of the discussion in step 1 as follows:

   a. If the alleged/presumed father agrees to voluntary testing, attempts to obtain his signature on the Consent to Genetic Testing (this form accompanies both the papa letter and the NPR).

      i. If the alleged/presumed father signs and returns the Consent to Genetic Testing (standard version), proceeds to step 3.

      ii. If the alleged/presumed father is willing to sign the Consent to Genetic Testing except for the "costs" provision, **and** conditions for waiving fees apply (see Recovery of Testing Fees, POLICY), prepares and sends to him a variation of the consent form omitting the cost agreement; upon receipt of the signed form, proceeds to step 3.

      iii. If substeps 2a(i) and 2a(ii) above do not apply, **either**
         - schedules testing without a signed consent, if applicable (see Recovery of Testing Fees, POLICY, for specific conditions); proceeds to step 5, **or**
         - does not schedule testing; proceeds as in step 2b.

   NOTE: Advantages of Formal Consent. In cases where voluntary testing is agreeable the caseworker should make every effort to obtain a signed Consent to Genetic Testing. This document increases the likelihood the man will appear for drawing, and gives the CSED the authority (1) to proceed against the man if he fails to appear for drawing and (2) unless costs are waived, to enforce payment of testing costs.

   b. If the alleged/presumed father will not agree to voluntary testing, resumes case initiation procedures in CS 602.1 or 602.2, or proceeds with the contested case as directed in section CS 605.2 or 605.3.

3. **Initiating a Genetic Testing Order.** Upon receipt of a signed Consent to Genetic Testing, proceeds as in 3a and 3b below.

   a. Checks SEARCHS for any reason to protect the address of the alleged/presumed father. If a reason is found, and the alleged/presumed father's address appears in the Certificate of Mailing, or he has entered his address, telephone, or social security number on the form by hand, attaches a note to the document warning that the alleged/presumed father's address or other personal information should be deleted from any copy sent to the obligee or mother in step 4.

   b. Forwards the original signed Consent to Genetic Testing to the Office of the Administrative Law Judge (OALJ); retains a copy in the case file.

OALJ

4. **Issuing a Genetic Testing Order.** Obtains the signature of the Administrative Law Judge (ALJ) on, and issues, a genetic testing order (incorporated in the Consent to Genetic Testing); mails copies to the alleged or presumed father, the obligee, the mother if she is not the obligee, and the caseworker.

Steps 5 through 17 apply to voluntary testing as well as to testing required after a hearing.

Caseworker

5. **Scheduling.** Arranges for tissue sampling or "drawing" of the participants (the alleged/ presumed father, the mother, and the child) as in step 5a, 5b, or both; the mother's appointment will include the child, unless the mother is not the obligee (see section CS 602.2).

   a. Prepares and faxes a request to the CSED's contracted testing laboratory, identifying the participant(s) and giving the necessary information; enters the SEARCHS event for the request. The laboratory will set up each requested appointment according to the participant's geographical location (including out-of-state locations), and will inform the caseworker of the scheduled date, time, and place, and the name and telephone number of the contact person at the draw site.

   b. If drawing is available on-site at the regional office and any of the participants live in the area, schedules the appointment(s) directly with the phlebotomist/medical technician. Enters a SEARCHS event for the appointment(s) scheduled.

   NOTE: Scheduling Mother and Child. If there is any reason to believe the alleged/presumed father may not appear for the drawing, the caseworker should request (or schedule) an appointment date for the mother and child that is later than the appointment date for the alleged/presumed father. Normally, only one appointment is needed for the mother and child, regardless of the number of allegations in the case.

6. **Notifying Testing Participants; Monitoring Appearances.** For **each** appointment scheduled--the alleged/presumed father, and the mother and child--takes actions as follows:

   a. Prepares form CS-601.1M or CS-601.1F, Genetic Testing Scheduling Letter, including the name of the contact person at the draw site if needed; sends the letter by regular mail to the person to be tested. (If the person has been or will be served with a Genetic Testing Subpoena under the procedures in section CS 605.2, the scheduling letter is not necessary.)

   b. Enters a SEARCHS case note for the drawing scheduled, giving the date, time, and place.

   c. Monitors for the participant's appearance at the scheduled appointment by either calling the draw site, or checking the case status on line via the automated tracking program provided by the laboratory.

7. **Enforcing the Participants' Appearance.** [This step applies only where genetic testing has **not** been ordered by a Genetic Testing Subpoena. For procedures following failure to appear for drawing for subpoena-ordered genetic testing, see section CS 605.2 or 605.3.] If any participant fails to appear for a drawing, enters a SEARCHS case note for the failure to appear and contacts the participant about rescheduling the appointment (see NOTE below). If the participant will not cooperate, takes action as follows:

   a. If the alleged/presumed father fails to appear for a drawing **and has signed** a Consent to Genetic Testing, proceeds as follows:

      i. In a single-allegation case, follows the procedures in section CS 606.1 for obtaining a Paternity Default Order; also if applicable, proceeds to step 15 for recovering any testing costs for the mother and child.

      ii. In a multiple-allegation case, consults with the CSED staff attorney to determine the appropriate remedy; works with the attorney in obtaining a district court order or in taking administrative action (contempt, license suspension) to compel submission. Returns to this section (step 8) when and if the alleged/ presumed father finally participates.

      Note that a Genetic Testing Subpoena is not needed in this situation--the order contained in the Consent to Genetic Testing has the same force and effect as the subpoena in allowing the CSED to pursue harsher remedies.

b. If the alleged/presumed father fails to appear for a drawing **and has not signed** a Consent to Genetic Testing, begins or resumes contested case procedures as described in section CS 605.2 or 605.3, subject to the NOTE below.

c. If the mother and child (or either one) fail to appear for a drawing, takes action as in section CS 605.2 to obtain the mother's participation. Returns to this section (step 11) when and if the mother finally participates.

NOTE: Rescheduling Missed Appointments--Caseworker Discretion. The caseworker must determine on a case-by-case basis whether rescheduling is feasible. If the person seems likely to cooperate, it is in the CSED's interest to attempt to reschedule the appointment before taking any adverse action.

8. **Unintended Person Tested.** If circumstances indicate that a person who appeared for and submitted to a drawing under this section was not the participant intended by the CSED, and
   - genetic testing was ordered by the CSED, either by Consent to Genetic Testing or by Genetic Testing Subpoena, contacts the OALJ and requests a hearing on the matter; proceeds to step 10.
   - genetic testing was not ordered by the CSED, takes one of following steps, as appropriate:
     > begins or resumes contested case procedures against the alleged/ presumed father as described in section CS 605.2.
     > takes action against the mother to compel participation as in section CS 605.2.

ALJ/OALJ

9. **Identity Hearing.** Upon receiving a request from the caseworker for a hearing on the identity of a person tested, proceeds as follows:

OALJ a. Submits the request to the Administrative Law Judge (ALJ) for a determination. If the ALJ determines there is reasonable cause to suggest the wrong person was tested, schedules a hearing on the matter, and sends copies of the resulting decision and order to the alleged/ presumed father, the obligee, the mother if she is not the obligee, and the caseworker.

ALJ b. If reasonable cause exists, conducts a hearing to determine the identity of the person tested or the chain of custody of the sample. (If the alleged/presumed father fails to appear for the hearing, proceeds to determine the issue based on the evidence presented.) Issues a decision and order either upholding the validity of the sample or ordering the retesting of the participant in question.

NOTE: Limited Retesting. For any retesting ordered in this substep (9b), if after the retesting is completed a second identity hearing is requested and granted, and the ALJ determines at that hearing that the sample obtained is not valid, the CSED will not order additional retesting, but will proceed as for a failure to appear for genetic testing.

Caseworker

10. **Role in and Results of the Identity Hearing.** Prepares evidence for the hearing; attends the hearing and appears as a witness.

    a. If the ALJ upholds the validity of the sample, proceeds to step 11.

    b. If the ALJ orders retesting, proceeds as for testing ordered after an NPR hearing in section CS 605.2.

11. **Obtaining Testing Results.** If all participants appear for their drawings, and there is no question about the identity of any of the samples drawn, enters a SEARCHS case note documenting the appearances.

    Monitors for receipt of the testing results from the contracted testing laboratory within 30 days after the last participant's sample was drawn. If useful, checks the status of testing on line, via the automated tracking program provided by the laboratory.

12. **Processing Testing Results.** Upon receipt of the testing results from the laboratory, follows the procedures in section CS 602.1, 605.2, or 605.3 for notifying the applicable parties, sending the results to the Paternity Registry, updating SEARCHS, and taking any applicable NOCS actions; pursues cost recovery as in step 15. In addition, if the results are negative (the man tested is excluded), proceeds according to steps 12a and 12b.

    NOTE: CAUTION! Consequences of SEARCHS Processing. Certain direct, case-note entry actions automatically set up SEARCHS fee accounts. In updating SEARCHS information to document receipt of testing results, the caseworker should take care **not** to create a fee account unless it is specifically intended. See step 15 for specific conditions under which the CSED may set up a fee account for genetic testing costs.

    Additional steps for negative testing results:

    a. **Mother's Confirmation of Identity.** Determines whether the mother's confirmation of the tested man's identity is needed. If so, arranges for the mother to look at the photograph of the man taken at the drawing site. (If at all possible, the mother should come to the CSED office to look at the original photograph; if this is not possible, the caseworker should obtain a best copy of the photograph and send it to the mother for confirmation.) If the mother confirms the man's identity, or if confirmation is not needed, proceeds to step 12b.

If the mother claims the pictured man is not the alleged/presumed father, proceeds as in step 8.

NOTE: Determining Need for Confirmation. Confirmation of an excluded man's identity via step 12a is standard CSED procedure. Regional policy, however, may limit this requirement to certain types of situations. For example, a region may elect to require confirmation only when (1) the caseworker suspects a man other than the alleged/presumed father was tested or (2) testing results exclude the last remaining alleged father **and** the mother claims she cannot provide any other names because no other men had sexual access during the period of conception (in this situation, confirmation of **all** the tested men's identities would be indicated).

b. **Order of Nonpaternity.** If requested by the excluded man, the obligee, the mother if she is not the obligee, or another state, prepares form CS-604.1A, Order of Nonpaternity, and sends it to the OALJ with the testing results and

- stuffers for mailing to the alleged/ presumed father, the obligee, and the mother if she is not the obligee,
- a certified copy of the abstract of the Montana birth certificate (if the excluded man is named on the document),
- any CSED order to be vacated or terminated by the Order of Nonpaternity (examples: Paternity Default Order, CSED support order), and
- (optional) any voluntary acknowledgment of paternity, or registration in the Putative Father Registry, signed by the excluded man (helpful for any OALJ discussions with the Office of Vital Statistics).

OALJ

13. **Issuing the Order of Nonpaternity.** Upon receipt of form CS-604.1A, obtains the signature of the ALJ and issues the Order of Nonpaternity; mails copies to the appropriate persons (see step 12) and the caseworker; files the genetic testing results and the original Order of Nonpaternity, along with any accompanying documents, in the Paternity Registry.

Regional Manager or Designee

14. **Testing Costs Payable.** Upon receipt of a bill from the laboratory for the total genetic testing costs in a case, verifies the bill with the caseworker (confirms the testing was for a CSED paternity case, the results were received in the region within 30 days after the last participant was drawn, and there are no extra charges if one of the participants is deceased (see POLICY)); approves the bill for payment and forwards it to the Administrative Services Bureau (ASB). ASB will arrange for payment to the laboratory for all persons tested.

Caseworker

15. **Assessing Genetic Testing Fees.** Using the cost recovery table following these

PROCEDURES, determines whether and how to seek reimbursement for the total testing costs paid by the CSED. Takes action in step 15a, 15b, or 15c, as appropriate. (If the alleged/ presumed father pays the testing costs before a fee account is set up, discontinues action in this step and proceeds directly to step 16.)

a. Sets up a fee account on SEARCHS; includes the amount in the debt for future enforcement.

b. Includes a proposed judgment in the NOCS or subsequent notice, or, if applicable, in the Admission of Paternity and Application for Paternity Consent Order sent to the alleged/presumed father with the positive testing results. Sets up a fee account when the order resulting from the notice or Admission is entered; includes the amount in the debt for future enforcement.

c. Takes no action to recover the testing costs; does not set up a fee account.

NOTE 1: Requirements for Fee Accounts. The CSED will set up a SEARCHS fee account for testing costs not yet paid by the alleged/presumed father **only if** a judgment has been entered for the fee amount. A judgment is "entered" for purposes of establishing a fee account as soon as **both** of the following conditions are met:

(1) The CSED has issued an order listing the dollar amounts payable if test results are positive or if a default applies. (The order may be issued subsequent to a genetic testing hearing, or upon receipt of a signed Consent to Genetic Testing or Admission of Paternity and Application for Paternity Consent Order that includes testing costs, or subsequent to any CSED notice that proposes a judgment for testing fees.)

(2) Results of genetic testing are positive, or a default applies.

In cases where payment is received before one or both of the above conditions are met, procedures in step 16 apply.

NOTE 2: Special Situations for Cost Recovery. The caseworker **may**, with the approval of the CSED staff attorney and the voluntary cooperation of the mother, arrange testing for a defaulted (established) father at his request. In this situation the CSED **must** collect the associated, non-refundable testing costs from the father **before** the costs are incurred (see step 16). In another situation, if the father claims paternity and the mother denies he is the father, and testing then results in a 95% probability of paternity, the caseworker **may** pursue a judgment against and repayment from the mother; consultation with the CSED staff attorney in this situation is required.

NOTE 3: Testing in a Non-CSED Case. Where CSED assistance is requested in arranging genetic testing for individuals who are not participants in a CSED case, the CSED refers the parties directly to the contracted testing laboratory and **does not** incur testing costs on their behalf. (See section CS 601.4, Requesting Genetic Testing, for case participants' options outside the CSED's regular administrative paternity establishment process.)

16. **Processing Payments for Genetic Testing Fees.** Upon receipt of a payment for testing costs from the alleged/ presumed father proceeds as follows (for any that apply):

    a. Sets up a fee account if one does not already exist. If necessary, performs the required SEARCHS processing to create a fee account in the absence of an order (judgment) for fees.

    b. If a manual payment instruction (MPI) is appropriate (see the NOTE below), enters an MPI on SEARCHS to apply the payment to the fee account, and makes a notation on the check identifying the payment for genetic testing fees; forwards the check to TAPP. If an MPI is not appropriate, forwards the check to TAPP for regular processing through the SEARCHS algorithm.

       NOTE: Manual Payment Instruction for Fee Payments. An MPI is appropriate only when both of the following conditions are satisfied:
       (1) Posting to a fee account is proper. This is true when the support obligation of the alleged/presumed father for this child has not yet been established, so there is no current support account to satisfy.

       (2) There are other SEARCHS accounts (in addition to the fee account created in 16a) to which the payment would be posted if run through the regular SEARCHS algorithm. For example, the alleged/presumed father may be an obligor in another case.

    c. If the payment is received before the genetic testing results are received, processes the payment as in 16a and 16b above and awaits the testing results. If the results are negative (and the special situations in step 15, NOTE 2 do not apply), initiates a SEARCHS adjustment to refund the payment.

CSED COST RECOVERY TABLE PROVIDED ON FOLLOWING PAGE

Recovery of Genetic Testing Costs

SCENARIO	LIABLE PARTY	RECOVERY PROCEDURES
All parties appear for drawing, results = 95%		
> Signed Consent to GT (w/costs) **(automatic judgment)**	Father	Set up fee account; include in debt for future enforcement
> Oral agreement to GT, costs not waived by caseworker	Father	Include proposed judgment in NOCS, subsequent notice, or Admission; set up fee account when order following notice/ Admission entered; include in debt for future enforcement
> GT Subpoena - judgment for costs awarded at hearing **(automatic judgment)**	Father	Set up fee account; include in debt for future enforcement
- judgment for costs denied at hearing	CSED	n/a
> Oral or written consent to GT, costs waived by caseworker	CSED	n/a
All parties appear, results exclude AF/PF	CSED	n/a
AF/PF does not appear; mother and child drawn		
> Signed Consent to GT (w/costs) **(automatic judgment)**	*Father, upon default	Set up fee account; include in debt for future enforcement
> Oral agreement to GT	CSED	n/a
> GT Subpoena - judgment for costs awarded at hearing **(automatic judgment)**	*Father, upon default	Set up fee account; include in debt for future enforcement
- judgment for costs denied at hearing	CSED	n/a
> Written consent to GT, costs waived by caseworker	CSED	n/a
AF/PF drawn, mother and child do not appear	CSED	n/a

* single-allegation cases only (in multiple-allegation cases where man does not appear for drawing, CSED pays costs; if non-appearing man is later established as father by exclusion of all other parties, single-allegation cost recovery then applies)

SUPERSEDES

CS 605.2, Notice of Parental Responsibility--Single-Allegation Cases, January 18, 2001

REFERENCES

Sections 40-5-231 through 40-5-237, and 40-6-101 through 40-6-118, MCA; Rule 301, Montana Rules of Evidence

POLICY

Applicability. The procedures in this section apply only when the following four conditions are met:

(1) The case meets the definition of a single-allegation, unresolved paternity case given in section CS 602.1
(2) The CSED can assert personal jurisdiction over the alleged father
(3) In the determination of the caseworker there is reasonable cause to proceed with the contested case against the alleged father
(4) The CSED has taken the appropriate case initiation steps under section CS 602.1, including obtaining birth records and mother's information; entering case information on SEARCHS; and, except in special situations, contacting the alleged father and giving him an opportunity to resolve paternity voluntarily.

See section CS 602.1 for further details on jurisdiction, reasonable cause, and special situations for omitting initial contact. For multiple-allegation cases that otherwise meet the above conditions, refer to procedures in section CS 605.3.

Purpose of the NPR. The CSED uses the Notice of Parental Responsibility (NPR) to begin the process of resolving contested paternity through genetic testing. The NPR gives the alleged father the opportunity to formally deny paternity and request a hearing, or to eliminate the need for a hearing by agreeing to genetic testing. The purpose of the hearing is to determine whether genetic testing should be ordered. The NPR is also used (1) to obtain resolution of paternity by direct consent of the alleged father or (2) to force resolution of paternity by default, if the alleged father fails to respond to the notice.

Combined NPR-NOCS Process. Except as listed below the CSED will issue the NPR concurrently with the Notice and Order Concerning Support (NOCS) or the Subsequent Notice and Order Concerning Support. (For purposes of this section the term "NOCS" is used to mean either the NOCS or Subsequent NOCS document, or the overall activity of support order establishment.)

The CSED will arrange for service of both notices (the NPR and the NOCS) and all accompanying documents in a single, combined package. Procedures for issuing and taking action on both the combined package and the NPR alone are given in this section. Sections CS 401.3, Notice and Order Concerning Support, and CS 401.6, Subsequent Notice and Order Concerning Support, give further details for NOCS procedures.

EXCEPTIONS: The CSED will proceed to issue an NPR without an accompanying NOCS **only** in the following situations:

(1) The paternity case was previously barred by the statute of limitations **and** the case is a public assistance case. ("Previously barred" cases are those where the first IV-D application or referral was made before March 19, 1985, and no petition to establish paternity was filed in court within certain prescribed time limits; see historical versions of section 40-6-108, MCA for more specific parameters.) The CSED staff attorney should be consulted in determining whether a case is subject to this restriction.

(2) The alleged father is under the age of 18. The CSED will not proceed to establish a support obligation until the obligor in the case is 18 years old.

NOTE: Special Requirements for Serving Minors. In a case where the alleged father is under the age of 18 the CSED **will** proceed to establish paternity; however, special requirements--including notification of the alleged father's parents--apply to service of the NPR and other subsequent actions. Consult the CSED staff attorney before taking any action against, or making any contact with, a minor alleged father.

(3) The CSED has jurisdiction to establish paternity but not to establish the subsequent support order.

NOTE: When Paternity "Contacts" Insufficient for Jurisdiction to Establish Support Order. In most cases jurisdiction to establish paternity implies jurisdiction to establish the support order, but in some (rare) cases it does not. Certain jurisdictional "contacts" can be stronger for purposes of paternity than for order establishment, especially those that involve the alleged father's relationship with the child in the past. Consult the CSED staff attorney whenever jurisdiction to establish a support order is based solely on one of the following conditions:
(a) The alleged father resided with the child in Montana
(b) The alleged father resided in Montana and provided prenatal expenses or support for the child
(c) The child resided in Montana as a result of the alleged father's acts or directives.

(4) The case is a non-IV-E foster care referral. Under Montana law **only the courts** can establish child support orders in these cases. The CSED can establish paternity, but may not proceed to establishment of the support obligation. (This exception does not apply to IV-E cases.)

Notice of Default. The Notice of Default is an optional step in both the NPR and NOCS default processes, used at the discretion of the caseworker and subject to regional policy. Generally the Notice of Default applies when (1) the alleged father has contacted the CSED in response to the combined service but has not taken appropriate action on the notice in question and (2) **in the discretion of the caseworker** a Notice of Default would serve a useful purpose in the case by prompting the alleged father to take appropriate action on the NPR or NOCS. "Appropriate action" means formal agreement to the proposed CSED action; written request for hearing; or specified cooperative action such as agreeing to genetic testing (NPR) or providing financial information (NOCS).

Time Frames. Federal time frames for establishing support orders are very strict, and do not allow extra time for establishing paternity. The caseworker must manage all paternity **and** NOCS decisions and actions in this section in a way most likely to meet the following "expedited process" requirement:

> **The CSED must establish a support order or dismiss the action within 6 months after service of the NOCS. This time frame applies regardless of whether the CSED must also establish paternity in the case.**

PROCEDURES

CAUTION: In third-party obligee cases see section CS 602.2 for proper procedures in all steps involving the "mother" below.

The terms **ALJ** and **OALJ** as they appear in these PROCEDURES refer to the CSED Administrative Law Judge, and the CSED Office of the Administrative Law Judge, respectively. The OALJ performs the CSED's administrative "clerk of court" function.

Caseworker

1. **Determining the NPR Package.** Determines whether a combined NPR-NOCS package is appropriate (see POLICY, this section). If so, proceeds to step 2.

   If a combined package is not appropriate, proceeds with the NPR alone, as follows:

   a. Prepares and issues for service on the alleged father an NPR package containing items (2) through (5), and if applicable item (8), from step 2. Retains copies in the case file.
   b. Obtains service of the NPR package by personal service; acknowledgment; or certified mail, restricted delivery, return receipt requested.
   c. Continues with actions in steps 3 through 29 as applicable, disregarding references to a NOCS case or actions. Upon resolution of paternity, monitors the status of the case, and proceeds to section CS 401.3, Notice and Order Concerning Support, or section CS 401.6, Subsequent Notice and Order Concerning Support, if and when applicable.

2. **Combined NPR-NOCS Package.** Prepares and issues for service on the alleged father a combined NPR/NOCS package containing
   (1) Form CS-605.2D, Cover Letter for Combined NPR-NOCS Package
   (2) Form CS-605.2A, Notice of Parental Responsibility
   (3) Form CS-606.2A, Admission of Paternity and Application for Paternity Consent Order, accompanied by the CSED information sheet, "Paternity Information for Parents."

NOTE: If the case is being treated as a single-allegation case because all other alleged/presumed fathers have now been excluded by genetic testing, the "multiple-allegation" version of the Admission form, containing informed consent language, is required. In this situation the form must be adjusted to remove the reference to positive genetic testing results.

(4) Form CS-606.2B, Statement Concerning Paternity (containing Denial of Paternity and Request for Hearing)
(5) Form CS-606.2F, Consent to Genetic Testing
(6) Form CS-401.3A, Notice and Order Concerning Support, or form CS-401.6A, Subsequent Notice and Order Concerning Support
(7) Form CS-404.6A, Financial Affidavit
(8) (Where service by certified mail is not appropriate or cannot be obtained) Service document--either form CS-401.3C, Sheriff's Praecipe, or form CS-405.1, Acknowledgment of Receipt of Notice and Waiver of Service.

Retains a copy of the notices and the service document in the case file.

NOTE: Combined Praecipe. When a sheriff's praecipe is used, the caseworker is responsible for adapting the praecipe for service of both notices. In most cases a single praecipe, instructing the sheriff to serve **both** the NPR and the NOCS on the man named, is appropriate. In some cases two praecipes may be needed (for example, where the sheriff's office specifically requires a separate praecipe for each notice, or where the return of service following a "combined" praecipe will not include the names of the individual notices).

3. **Service of Notice.** Obtains service of the notice package by (1) certified mail, restricted delivery, return receipt requested, (2) personal service of the package through the sheriff or a civil process server, or (3) acknowledgment. Monitors for return of the appropriate document(s), or for contact by the alleged father, within 20 calendar days of service.

   NOTE: Out-of-State Service. When service is to occur outside Montana, and certified mail has not been effective, the caseworker should attempt to identify the best option--in terms of time and cost--for service in the local jurisdiction. Process servers (both sheriffs' offices and private process servers) vary in fees charged, prepayment requirements, reliability, and delivery time. If payment is required in advance, the caseworker must arrange for a state warrant; supervisor approval is required for advance payment.

4. **NOCS Action Against the Mother or Custodian.** Concurrently with service of the above notices on the alleged father, follows applicable procedures in section CS 401.3 or 401.6 relating to the mother or a third-party custodian.

5. **Response to the NPR.** Takes action appropriate to the alleged father's timely response to the notice package as follows:

NOTE 1: "Timely" Response. If an alleged father responds after the 20-day period has passed, but before any default order in step 7 is entered, the response is treated as timely.

NOTE 2: Responder's Intent. In processing the response to the combined NPR-NOCS package, the caseworker should consider whether a returned document represents the alleged father's true intention for the corresponding notice. If there is evidence it does not, the caseworker should contact the alleged father and clarify the response. For example, the alleged father may return the NOCS Request for Hearing in an attempt to contest the paternity allegation.

a. **No Response.** If the alleged father does not contact the CSED, or contacts the CSED but does not follow with action appropriate to the NPR, follows the procedures in section CS 606.1 for obtaining a Paternity Default Order and performing the necessary SEARCHS processing; **concurrently,** takes appropriate action in step 6 for establishment of the support order.

   NOTE: Option for Notice of Default. If regional policy allows, and if in the discretion of the caseworker a Notice of Default would apply (see POLICY), the caseworker **may** choose to add this step to the default action in 5a above by proceeding as follows:

   > Prepares and sends to the alleged father by regular mail and according to procedures in section CS 405.4, form CS-405.4, Notice of Default, adjusting the language to fit the paternity default situation. If the alleged father responds to the Notice of Default by taking action in any of steps 5b through 5e within 10 working days, proceeds according to that step. If not, proceeds as in step 5a above.

b. **Agreement to Genetic Testing.** If the alleged father returns a signed Consent to Genetic Testing, or contacts the CSED and orally agrees to genetic testing, follows the procedures in section CS 604.1 for scheduling the appointments and notifying the alleged father and the mother; seeking a Consent to Genetic Testing if one has not been obtained; monitoring the appearance of the alleged father, the mother, and the child; taking action after any failure to appear; obtaining the testing results; and settling costs. Returns to this section to process the testing results; proceeds at that time with the NOCS case as in step 6.

c. **Admission of Paternity.** If the alleged father returns a signed Admission of Paternity and Application for Paternity Consent Order, follows the procedures in section CS 606.2 for obtaining a Paternity Consent Order and performing the necessary SEARCHS processing; **concurrently,** proceeds with the NOCS case as in step 6.

d. **Request for Hearing.** If the alleged father returns a signed Statement Concerning

Paternity, or an equivalent document requesting a hearing on the NPR, directly to the OALJ, proceeds to step 11. If the alleged father returns a hearing request directly to the region, immediately notes the date of receipt, reviews the request, and proceeds **that day** in step 5d(i) or 5d(ii) below. Upon resolution of paternity, proceeds with the NOCS case as in step 6.

i. If the request indicates the alleged father is willing to undergo genetic testing, and does not claim any defenses described in step 12a, contacts the alleged father **that day** (the day the request is received) for clarification of the request. Explains there appears to be no reason for a hearing, and proceeds in substep A or B below as applicable.

  A. If the alleged father states he does not want to proceed to hearing, prepares and sends a letter to the alleged father confirming the conversation, and stating the CSED considers the hearing request withdrawn. Retains the hearing request in the case file, enters a SEARCHS case note documenting the conversation and the letter, and proceeds with genetic testing as in step 5b.

  B. If the alleged father states he does want to proceed to hearing, or if the alleged father cannot be contacted for clarification that day, proceeds as in step 5d(ii) below.

  NOTE: Extended Pre-Hearing Contact. Before ending any conversation with the alleged father in the above paragraph (B), it may be advantageous to skip directly to step 12c, to identify the contested elements of the case while the alleged father is still available, then return to step 5d(ii) below.

ii. If the request does not indicate an agreement to genetic testing, or if it claims a defense described in step 12a, immediately faxes the request, along with any dates the caseworker will be unable to attend a hearing, to the OALJ. Sends the original request to the OALJ by regular mail, and enters a SEARCHS case note. If necessary, researches the issues raised in the hearing request. Proceeds to step 12.

e. **Proof Against Paternity or CSED Action.** If the alleged father contacts the CSED and proves he could not be the child's biological father (see NOTE below), or proves a defense listed in step 12a, dismisses both the NPR and the NOCS using two (separate) forms CS-403.1F, Motion and Order to Dismiss Administrative Notice, adapted as necessary; updates the SEARCHS CHL and CAP screens; and proceeds to step 22.

NOTE: Proof Against Biological Paternity. Proof the alleged father could not be the child's biological father must be conclusive and **must be approved by the CSED staff attorney**. Generally proof must be in the form of

- a showing the alleged father could not have had access to the child's mother during the probable time of conception (for example, he was on board a ship at sea or in prison), or
- medical statements affirming he was physically incapable of fathering a child during the time the child was conceived.

f. **Information Request.** In addition to the actions in steps 5a through 5e above, sends a copy of the CSED's Paternity Establishment Handbook (regional supply) to the appropriate person or persons if
  - the alleged father or the mother contacts the CSED with specific questions about a paternity hearing or other proceedings in the contested case, or
  - the alleged father requests a hearing and step 5d(ii) applies.

6. **Proceeding with the NOCS Case.** Upon resolution of paternity, takes action in section CS 401.3 or CS 401.6 according to the alleged father's timely response to the NOCS.

EXCEPTION: If conditions for an NPR default (step 5a) or an NPR consent (step 5c) apply, does not wait for "resolution" via a final paternity order, but proceeds with any applicable default or consent action in section CS 401.3 or CS 401.6 concurrently with the paternity default or consent process. **Advises the OALJ of the concurrent paternity process when transmitting any NOCS-related documents under this exception.**

NOTE: Coordinating NOCS Actions. IMPORTANT! The caseworker is responsible for managing the timing and completion of **all** CSED actions following service of the NPR-NOCS package. To comply with strict federal time frames for expedited process in support order establishment, **it is essential the CSED proceed with the next step in the NOCS case as soon as it becomes appropriate.**

ALJ/OALJ

7. **Paternity Default or Consent Order.** Upon receipt of a paternity default or paternity consent package from the caseworker, proceeds as in section CS 606.1, Paternity Default Order, or CS 606.2, Paternity Consent Order; coordinates any accompanying NOCS actions as in step 8.

OALJ

8. **Coordinating the NOCS Action.** Upon receipt of any NOCS-related documents, checks SEARCHS for resolution of paternity and proceeds as follows:

a. If paternity has been resolved, proceeds as in section CS 401.3 or CS 401.6.

b. If paternity has not been resolved and
  - the NOCS-related documents have been submitted by the caseworker under the EXCEPTION in step 6, processes the requested support order concurrently with the paternity consent order or the final paternity default

order, as applicable.

- the document is a hearing request from the alleged father or the mother in response to the NOCS, delays processing the hearing request until the alleged father's paternity is resolved; notifies the caseworker of the NOCS delay.

Caseworker

9. **Reactivating the NOCS Case.** Upon resolution of paternity in a case in which the OALJ has delayed processing the NOCS action in step 8b, reactivates the NOCS case by notifying the OALJ by telephone, electronically, or in writing. Paternity is "resolved" for purposes of NOCS reactivation when one of the following events occurs:
   (1) A CSED Paternity Default Order is issued.
   (2) A CSED Paternity Consent Order is issued.
   (3) A paternity order is issued by the district court.
   (4) Genetic testing results establishing the man as the father are received at the OALJ's Paternity Registry.

OALJ

10. **Processing the Hearing Request.** Upon receipt of a signed Statement Concerning Paternity (hearing request) or the equivalent from the alleged father, determines whether the request is timely. If so, sends a copy of the hearing request to the caseworker, determines whether an Order to Respond applies, and proceeds to step 10a or 10b, as applicable. If the request is not timely, proceeds to step 10c.

    NOTE 1: "Timely" Request. A request is timely if it is received within 20 calendar days after the SEARCHS date of service of the NPR, or after 20 calendar days have passed but before any default order in step 7 is entered.

    NOTE 2: Order to Respond. An Order to Respond applies if both of the following conditions are met:
    (1) The hearing request indicates the alleged father is willing to undergo genetic testing.
    (2) The hearing request does not allege any defenses described in step 12a.

    a. **Timely Request/No Order to Respond.** Upon being informed of the caseworker's unavailable dates, prepares, obtains the ALJ's signature on, and issues a Notice and Order for Genetic Testing Hearing setting the hearing date at least 45 days from the issue date, and setting a date for the exchange of witness lists and exhibits. Sends copies to the alleged father, the obligee, and the caseworker, and retains the original for the OALJ file. (The CSED is required by law to send a copy of the notice of hearing to the obligee; the obligee may attend and observe the hearing as a nonparty, or may testify as a witness if called. The requirement for notice of hearing does not extend to the mother in a third-party obligee case.)

ALJ/OALJ Upon request of a party to the hearing, issues subpoenas as required to compel the appearance of witnesses or to obtain evidence.

OALJ Upon request of a party holds a discovery conference to discuss the scope of discovery; prepares, obtains the ALJ's signature on, and issues an order setting discovery due dates; if necessary, arranges for a continuance of the genetic testing hearing. If the alleged father and the CSED disagree on the scope of discovery, sets a hearing for the ALJ to determine the limits on discovery issues.

OALJ b. **Timely Request/Order to Respond.** Immediately prepares, obtains the ALJ's signature on, and issues an Order to Respond, explaining there appears to be no reason for a hearing, and setting a date by which the alleged father must submit a written clarification confirming or withdrawing his hearing request. The response date is 10 calendar days plus 3 mailing days after the Order to Respond is issued. Sends copies to the alleged father and the caseworker, retains the original for the OALJ file, and enters the appropriate SEARCHS event.

i. If the alleged father timely responds in writing confirming he is requesting a hearing, enters the appropriate SEARCHS event and proceeds with the request as in step 10a.

ii. If the alleged father does not timely respond in writing, or timely responds but withdraws or fails to confirm the hearing request, enters the appropriate SEARCHS event and proceeds to step 24. (The event sends a tickler prompting the caseworker to set up genetic testing and to send a Genetic Testing Subpoena to the OALJ to be issued.)

NOTE: Determining the Alleged Father's Intent. In cases where a response in substep (i) or (ii) above is unclear, the OALJ must obtain a determination from the Administrative Law Judge as to whether the hearing request is confirmed.

c. **Untimely Request.** Prepares, obtains the ALJ's signature on, and issues an order denying the hearing for an untimely request. Sends copies to the alleged father and the caseworker, and retains the original for the OALJ file.

Caseworker

11. **Processing the Hearing Request.** Upon receiving a copy of a hearing request from the OALJ, within 3 working days informs the OALJ of any dates the caseworker will be unable to attend a hearing. If necessary, researches the issues raised in the hearing request. Proceeds to step 12.

12. **Pre-Hearing Contact with the Alleged Father.** As soon as possible following receipt of the hearing request, contacts the alleged father concerning the status of the paternity case, and proceeds in steps 12a through 12c as applicable. If unable to contact the alleged father before a hearing is held, documents the attempts and skips

to step 13.

If an Order to Respond is issued in the case, monitors for results while proceeding with discussions in this step; if the OALJ requests a Genetic Testing Subpoena, coordinates actions as in step 14.

a. **Defenses.** If the alleged father has claimed an absolute defense against CSED paternity action, or has raised some other defense in the case (statute of limitations, lack of personal jurisdiction, physical defenses described in step 5e), discusses the facts of the defense. If applicable, arranges to obtain copies of any documents supporting the alleged father's claim.

   NOTE: Absolute Defenses Defined. Absolute defenses are facts that are not subject to further proof, and that prevent the CSED from proceeding with a paternity action. Examples of absolute defenses include (1) there is a current court order or irrebuttable presumption establishing another man as the father, (2) the CSED served the NPR on the alleged father by mistake, intending to serve another man, (3) genetic testing has already excluded the alleged father, or (4) a paternity action for the same child is pending in another jurisdiction (so the CSED does not have subject matter jurisdiction in the case).

   i. If the alleged father proves the defense, dismisses the NPR and the NOCS as in step 5e; dismisses any scheduled hearing as in step 17; updates the SEARCHS CHL and CAP screens; and proceeds to step 22.

   ii. If the alleged father does not prove the defense, proceeds to step 12b.

b. **Cooperation.** Seeks the alleged father's voluntary cooperation in resolving paternity; if successful, proceeds in step 12b(i) or 12b(ii) below, as applicable. If not successful, proceeds to step 12c.

   i. If the alleged father agrees to voluntary testing, and
      - the OALJ has not yet scheduled a hearing, informs the OALJ and proceeds as in step 5b.
      - the OALJ has already scheduled a hearing, proceeds as directed in step 16.

      Proceeds in, or returns to, step 12c if it appears a hearing may be required despite the alleged father's oral agreement to testing.

      NOTE: Negotiating Voluntary Genetic Testing. At the caseworker's discretion, and only if conditions in section CS 604.1 for waiving the genetic testing fee apply, the caseworker may agree to waive the testing fee in return for the alleged father's voluntary participation before the hearing. (If the CSED is forced to order genetic testing via the hearing process and results are positive, the cost will be charged to the alleged father regardless of his agreement.)

ii. If the alleged father submits a signed Admission of Paternity and Application for Paternity Consent Order, dismisses the hearing as in step 17, updates SEARCHS (CAP and CHL screens), and proceeds as in step 5c.

c. **Elements of the Case.** Reviews the elements of the case with the alleged father. Using the CSED's Alleged Father Interview Guide, identifies any elements of the case the alleged father intends to contest at hearing. Contestable elements include service of notice, authority to act, jurisdiction, sexual contact, and (if applicable) presumption of paternity. If necessary, gathers additional, specific information about the alleged father's relationship with or access to the mother, or about the existence of a presumption. Proceeds to step 13.

13. **Hearing Checklist.** After completing the discussion in step 12c above (or if unable to contact the alleged father at all before the hearing), documents the discussion or attempt and prepares form CS-605.2H, Hearing Checklist. Sends the original to the OALJ; sends a copy to the alleged father and retains a copy for the case file; enters a SEARCHS event for the checklist issued.

14. **Request for Genetic Testing Subpoena.** Upon being notified by the OALJ that a Genetic Testing Subpoena can be issued as a result of an Order to Respond, proceeds as follows:

    a. If a subpoena is needed in the case, schedules genetic testing as in section CS 604.1, and proceeds to step 23.

    b. If a subpoena is not needed, or may not be needed, because the alleged father has agreed to testing, signed an admission, or proved a defense in step 12, informs the OALJ and proceeds with resolution of paternity as applicable. If a subpoena later becomes necessary (for example, if the alleged father fails to appear for voluntary testing and has not signed a consent), proceeds in step 14a.

Caseworker

15. **Hearing Preparation.** Participates in discovery as necessary; compiles exhibits for use as evidence at the hearing, and prepares a list of witnesses and exhibits. Checks SEARCHS for any reason to protect addresses or other personal information contained in the exhibits. (For example, both the Paternity Affidavit and the Statement Concerning Paternity contain an address entered by the person returning the form--that is, the mother and the alleged father, respectively.) If found, ensures that the protected information is removed from the copies sent to the other hearing participants (see paragraph below), and informs the OALJ of the information to be protected.

    Copies the exhibits and the list; sends the originals to the OALJ; sends one copy to the alleged father, and retains one copy for the case file. Does not send copies to the mother or obligee, except where the person will be called as a witness to testify at the hearing and needs a particular exhibit in relation to the testimony.

Arranges for testimony at the hearing, including the testimony of the mother (in cases where the mother is unavailable, consults the CSED staff attorney). Requests subpoenas as necessary to produce witnesses or documents, using the procedures in section CS 405.8. (Subpoenas for obtaining information prior to hearing are subject to the discovery deadline; subpoenas compelling only the person's appearance at the hearing are not.)

NOTE: Evidence at Hearing. Evidence presented at the hearing must support a "reasonable probability" the man had sexual intercourse with the mother during the probable time of conception. Refer to section CS 602.5, Evidence at Hearing, for guidance on identifying and evaluating possible evidence, and on preparing the case for hearing.

16. **Arranging Genetic Testing After a Hearing Is Scheduled.** If after the hearing is set the alleged father agrees to voluntary genetic testing, proceeds as in step 5b. **In addition,** resolves the hearing date as follows, in conjunction with step 17:

    a. If the alleged father has signed a Consent to Genetic Testing, dismisses the hearing.

    b. If the alleged father is not willing to sign a Consent to Genetic Testing and the testing date is **later** than the hearing date, vacates the hearing date. If the alleged father appears and participates in testing, dismisses the hearing; if the alleged father fails to appear, contacts the OALJ to reschedule the hearing and proceeds to step 15.

    NOTE: Caseworker Discretion in Vacating Hearing. In this situation the caseworker may elect to proceed with the requested hearing despite the voluntary agreement. This determination should be based on the facts of the case (for example, the alleged father is likely not to appear for testing; or, there is a special need for a hearing record in the case).

    c. If the alleged father is not willing to sign a Consent to Genetic Testing and the testing date is **earlier** than the hearing date, allows the hearing date to stand, pending the alleged father's appearance at testing. If the alleged father appears and participates in testing, dismisses the hearing; if the alleged father fails to appear, proceeds with the hearing.

17. **Dismissing or Vacating the Hearing.** If at any time in step 12 or 16 it becomes necessary to vacate the hearing date or to dismiss the hearing, prepares form CS-605.2C, Motion and Order to Vacate/Dismiss Hearing Date, selecting the "dismiss" or "vacate" option as directed; sends the form to the OALJ, with copies to the alleged father, the obligee, and the case file.

ALJ

18. **Conducting the Hearing.** Conducts the hearing in accordance with the requirements of sections 40-5-226, 40-5-233, and 40-5-253, MCA, including questioning witnesses and determining outstanding issues. If the alleged father fails to appear at the hearing, deems the hearing request withdrawn and proceeds as in section CS 606.1.

    Immediately after the hearing is opened, holds a status conference to identify the issues being contested. Where possible, obtains the alleged father's stipulation to uncontested elements of the CSED's case, and the parties' agreement to entry of uncontested exhibits. If the alleged father has claimed any absolute defenses, or any other defenses that would make genetic testing unnecessary, determines the defenses before proceeding with the evidence or testimony of the hearing.

    NOTE: Scope of Hearing. The scope and purpose of the hearing is limited to the single issue of whether there is a "reasonable probability" of sexual contact during the probable period of conception. If so, the CSED can order genetic testing. The purpose of the hearing is **not** to determine paternity or non-paternity.

Caseworker

19. **Caseworker Role at the Hearing.** Attends and appears as a witness at the hearing. If the alleged father stipulates to elements of the CSED's case, withdraws the exhibits corresponding to those elements. Requests that the ALJ enter a judgment for genetic testing costs (see section CS 604.1 for use of a judgment in cost recovery). If it will be beneficial in proceeding with the case, requests that the ALJ enter an oral order at the time of the hearing. (An oral order does not replace the written order issued in step 20.)

20. **Hearing Decision and Order.** The following steps apply:

ALJ a. Issues a decision and order advising the parties of the results of the hearing.

OALJ b. Sends copies of the decision and order to the alleged father, the obligee, and the caseworker, retaining the original for the OALJ file; enters the appropriate SEARCHS events.

Caseworker

21. **Hearing Results.** Upon receiving the results of the hearing takes action as follows:

    a. If the ALJ has deemed the alleged father's hearing request withdrawn, follows the appropriate procedures in section CS 606.1 for initiating a Paternity Default Order; proceeds with the NOCS case as in step 6.

    b. If the ALJ has determined there is no "reasonable probability" basis for ordering genetic testing, dismisses the NOCS as in section 401.3 and, after consultation with the CSED staff attorney, **either**

- pursues and obtains additional evidence against the alleged father and issues a new NPR-NOCS, **or**
- updates SEARCHS (CHL and CAP screens) to exclude the alleged father, and proceeds to step 22.

c. If the ALJ has determined reasonable probability exists and the alleged father should be required to submit to genetic testing, schedules genetic testing as in section CS 604.1 and proceeds to step 23.

22. **Alleged Father Excluded.** If the alleged father is excluded by genetic testing, or action against him is dropped before or as a result of a hearing (step 5e or step 21b), contacts the mother about other possible fathers. Proceeds with case initiation (section CS 602.1) for any new allegations, including "unknowns." If no other allegation is identified, notifies the assistance agency the mother has not cooperated; **or,** begins case closure in a non-public assistance case; **or,** obtains an investigative subpoena (section CS 405.12) to compel the mother to cooperate (see section CS 602.1 for proper use of this option).

23. **Preparing the Genetic Testing Subpoena.** Prepares and sends to the OALJ, retaining a copy for the case file, a subpoena package containing
    - form CS-605.2B, Genetic Testing Subpoena, listing the date, time, and place of the appointment for the alleged father;
    - form CS-401.3C, Sheriff's Praecipe, for personal service of the subpoena on the alleged father (or, if appropriate to the situation, form CS-405.1, Acknowledgment of Receipt of Notice and Waiver of Service, requesting the alleged father's signature in place of personal service);
    - a pre-addressed envelope to the sheriff (or, for service by acknowledgment, to the alleged father).

    Also, if a subpoena is required to secure the participation of the mother and child, prepares and sends to the OALJ a separate subpoena package for the mother's appointment.

    NOTE 1: Option for Service from Region. At the caseworker's or region's option the caseworker may omit the service document and envelope from the subpoena package, and request that the OALJ return the issued subpoena directly to the region for service.

    NOTE 2: Service of Subpoena Before Testing Date. If sheriff's service cannot be assured before the scheduled testing date, it may be necessary to obtain private service of process.

    NOTE 3: Determining the Need for Subpoena of the Mother. A subpoena is appropriate only when (1) the ordinary processes of case closure or reduction of public assistance benefits are not available **and** (2) the mother is not expected to cooperate voluntarily. Generally, the success of attempts to schedule the genetic testing appointment, or the nature of previous contacts with the mother, will indicate whether she is likely to cooperate. Subpoenas are most common in third-party obligee cases where there has been little (or unproductive) contact with the child's natural mother, and in public assistance cases where the mother has been cited for non-cooperation.

OALJ

24. **Issuing the Genetic Testing Subpoena.** Upon receipt of a subpoena package prepared in step 23, obtains the ALJ's signature on the subpoena document, and makes copies. Sends the original issued subpoena, a copy, and the praecipe to the sheriff for service (or, if applicable, sends the original subpoena and the acknowledgment to the alleged father). Sends a copy of the issued subpoena to the caseworker.

[step 25 deleted]

Caseworker

26. **Appearance for Genetic Testing.** Monitors the genetic testing appointments for appearance and participation of the appropriate persons, as described in section CS 604.1, and takes action as follows:

    a. If the alleged father fails to appear for the testing appointment, prepares default forms CS-606.1A and CS-606.1B and proceeds as in section CS 606.1; proceeds with the NOCS case as in step 6.

    b. If the unsubpoenaed mother fails to appear with the child for the testing appointment, contacts the mother and attempts to reschedule. If the mother refuses to appear takes action as follows:

       NOTE: Option to Proceed Against Mother Immediately. Upon the mother's failure to appear, the caseworker may elect to proceed directly to the following actions.

       i. In a public assistance case (mother obligee) notifies the assistance agency the mother has not cooperated. If the mother continues to not cooperate, and the public assistance referral remains open (or the referral closes but there is reason to complete the paternity establishment before closing the child support case), obtains a Genetic Testing Subpoena (step 23) to enforce the appearance of the mother and child.
       ii. In a non-public assistance case (mother obligee), begins case closure procedures. (EXCEPTION: In a father-applicant case, proceeds as in substep (iii) below.)
       iii. In a third-party obligee case, obtains a Genetic Testing Subpoena (step 23) to enforce the appearance of the mother and child.

NOTE: Failure to Obey Genetic Testing Subpoena. If the mother fails to appear for genetic testing after being served with a Genetic Testing Subpoena, the caseworker should consult with the CSED staff attorney about obtaining a district court order or initiating some other appropriate remedy (contempt, license suspension) to compel her submission.

27. **Processing the Genetic Testing Results.** If all parties appear for genetic testing, follows the procedures in section 604.1 for obtaining the results and settling costs.

    a. **If the results of genetic testing are positive,** takes concurrent actions as follows:

        i. Sends a package to the father containing
            - Form 601.1R, Genetic Testing Results Cover Letter,
            - a copy of the genetic testing results,
            - Form 606.2A, Admission of Paternity and Application for Paternity Consent Order, and
            - any applicable forms for continuing the NOCS process (for example, a Notice of Default, an amended NOCS).

        ii. Sends a package to the mother containing
            - a cover letter (regional or custom) explaining the results and any coordination with the NOCS process,
            - a copy of the genetic testing results, and
            - any applicable forms for continuing the NOCS process.

        iii. Sends the original results (the entire package, including the results, the chain of custody, and the photographs) to the CSED Paternity Registry maintained by the OALJ; retains a copy for the case file.

        iv. Performs the necessary SEARCHS processing on the CHL and CAP screens to establish the alleged father as the father; if applicable, notifies the public assistance agency of paternity establishment (does **not** send a copy of the actual testing results to the assistance agency).

        NOTE: Confidentiality of Testing Results. The printed testing results received from the contracted testing laboratory, listing the probability of paternity and other scientific data, are **confidential**. The caseworker may give to the public assistance agency only the general information that genetic testing did or did not provide a presumption of paternity.

        v. Completes resolution of the paternity case as in step 29; simultaneously, returns to the NOCS case (reactivating the case if necessary as in step 9) and proceeds as in step 6.

b. **If the results of genetic testing are negative,** takes concurrent actions as follows:

   i. Sends a package to the father containing a cover letter (regional or custom) explaining the results, and a copy of the genetic testing results.

   ii. Sends a package to the mother containing
      - a cover letter (regional or custom) explaining the results and requesting the mother provide the names of other possible fathers as in the NOTE below, and
      - a copy of the genetic testing results.

   NOTE: Request for Other Names. In a non-public assistance case the cover letter informs the mother the CSED may begin case closure if she does not provide other names. In a public assistance case the cover letter directs the mother to provide the names **to the public assistance agency** for referral to the CSED.

   iii. Sends the original results (the entire package, including the results, the chain of custody, and the photographs) to the CSED Paternity Registry maintained by the OALJ; retains a copy for the file.

   iv. Performs the necessary SEARCHS processing on the CAP and CHL screens to exclude the alleged father; if applicable, notifies the public assistance agency of the change in the participant's status (does **not** send a copy of the actual testing results to the assistance agency--see the NOTE in step 27a(iv)).

   v. Dismisses the NOCS as in step 5e.

   vi. Reviews the case information and proceeds as in step 22.

[step 28 deleted]

29. **Additional Paternity Steps After Positive Testing.** Following notification of the father about positive genetic testing results, **and while proceeding with the NOCS case,** takes action as follows:

   a. If the father signs and returns the Admission, updates SEARCHS (CHL screen) for the admission and proceeds as in section CS 606.2, Paternity Consent Order.

   b. If the father contacts the CSED and continues to deny paternity, follows the procedures in section CS 606.4, Referral to District Court.

   NOTE: Concurrent NOCS Actions. The father has 20 days from receipt of positive genetic testing results to file an objection. The CSED does not stay NOCS action during this response period, but proceeds with the next appropriate

NOCS step while the response period runs.

SUPERSEDES

CS 605.3, Notice of Parental Responsibility--Multiple-Allegation Cases, January 11, 1998.

REFERENCES

Sections 40-5-231 through 40-5-237, and 40-6-101 through 40-6-118, MCA; Rule 301, Montana Rules of Evidence

POLICY

Applicability. Procedures in this section apply when the following conditions are met:

(1) The case meets the definition of a multiple-allegation, unresolved paternity case given in section CS 602.1
REMINDER: In cases where all other possible fathers have been excluded by genetic testing, the case is treated as a single-allegation case, and procedures in section CS 605.2 apply.
(2) The CSED can assert personal jurisdiction over the alleged or presumed father
(3) In the determination of the caseworker there is reasonable cause to proceed with the contested case against the alleged or presumed father
(4) The CSED has taken the appropriate case initiation steps under section CS 602.1, including obtaining birth records and mother's information; entering case information on SEARCHS; and, except in special situations, contacting the alleged or presumed father and giving him an opportunity to resolve paternity voluntarily.

Processing Multiple-Allegation Contested Cases. Generally, the CSED applies the same policies and procedures to multiple-allegation "contested" cases (those involving a Notice of Parental Responsibility) as to single-allegation contested cases. These policies and procedures are given in section CS 605.2 (Notice of Parental Responsibility--Single-Allegation Cases), and are referenced throughout this section. The purpose of this section, however, is to identify the points at which multiple-allegation cases are treated differently from single-allegation cases, and to give the special procedures that apply.

As in case initiation (see section CS 602.1) the caseworker follows the procedures in this section for **each** alleged or presumed father. Processing of multiple allegations usually proceeds concurrently, although the CSED may, at the caseworker's discretion, wait to take the next step on one allegation in anticipation of paternity being resolved by actions on another. **Any determination not to proceed immediately to the next step for a given allegation must take into account the federal time frames within which paternity and the resulting support order must be established.** See section CS 605.2 for specific guidance and requirements.

Differences from Single-Allegation Processing. There are seven main differences between single- and multiple-allegation case processing:

(1) No "Default" Option. When an alleged or presumed father fails to respond to a Notice of Parental Responsibility (NPR); fails to appear for a scheduled NPR hearing; or fails to appear for genetic testing after being ordered by the CSED to do so, the CSED **cannot** enter a default order establishing paternity against that man. There are,

however, other options available to the CSED to force the alleged/presumed father into testing through increasingly stronger actions (see PROCEDURES). Genetic testing results, in turn, give the CSED the necessary authority to either establish paternity against the man or to exclude him.

(2) Admission of Paternity Not Acceptable. As in case initiation procedures the CSED will not act on an Admission of Paternity and Application for Paternity Consent Order in a multiple-allegation case unless the Admission (a) is supported by positive genetic testing results, or by the exclusion by genetic testing of all other possible fathers, and (b) includes language recognizing there are other allegations in the case.

(3) Additional Issue at Hearing. The issue of whether there is a reasonable probability of a **presumption** may be determined at hearing. This determination may be used--in addition to, or in the absence of, a determination of reasonable probability of sexual contact--as a basis for ordering genetic testing.

(4) Less Occasion for Concurrent NOCS Processes. Because the paternity default process does not apply, and the paternity consent process applies only after genetic testing is completed, in most multiple-allegation cases the caseworker must wait for formal resolution of paternity before proceeding on the alleged/presumed father's response to the NOCS.

(5) SEARCHS Processing. SEARCHS processing remains the same as for single-allegation cases except with respect to system document generation: some of the forms used in contested case processing are automatically generated in their single-allegation versions if the caseworker does not actively select the multiple-allegation option.

(6) Exclusion Not a "Cooperation" Issue. When an alleged or presumed father is excluded by genetic testing in a multiple-allegation case, the CSED does not contact the mother for names of other possible fathers, but simply proceeds to work the remaining allegations.

(7) Reduction to Single-Allegation Case. Because in a single-allegation case the CSED can establish paternity by methods other than genetic testing (default, Admission, or rebuttable presumption), exclusion of all allegations but one in a multiple-allegation case serves to advance the case toward establishment of paternity for the remaining (non-tested) man. When a multiple-allegation case **becomes** a single-allegation case, procedures revert to those given in section CS 605.2.

As stated in section CS 602.1, the RULES on the following page summarize the paths by which the CSED can establish paternity in multiple-allegation cases. These RULES are the basis for the procedural differences described above.

RULES FOR RESOLVING PATERNITY IN MULTIPLE-ALLEGATION CASES

The following RULES assume genetic testing will result in either a presumption (positive results) or an exclusion (negative results). The rules also assume it will be impossible to obtain positive genetic testing results for more than one man in a case. If either assumption should prove false, consult your CSED staff attorney.

RULE 1: The CSED will enter a Paternity Consent Order if either of the following applies:

(1) An AF or PF signs an Admission of Paternity (multiple-allegation version) AND the same AF or PF genetically tests positive (if there are other PFs, the order should include language overcoming the other presumptions).

(2) An AF or PF signs an Admission of Paternity (multiple-allegation version) but does not undergo genetic testing, AND all other AFs and PFs are excluded by genetic testing.*

RULE 2: If RULE 1 does not apply, the CSED will proceed with establishment of a support order (without entering a paternity order) if either of the following applies:

(1) An AF or PF genetically tests positive.

(2) One PF in the case does not undergo genetic testing AND all other AFs and PFs are excluded by genetic testing.*

RULE 3: The CSED will enter a Paternity Default Order for an AF or PF only if default conditions (failure to respond to notice or appear as ordered) apply AND all other AFs and PFs are excluded by genetic testing.*

RULE 4 : The CSED will proceed with establishment of a support order, regardless of the status of any other allegations or presumptions in the case, if it discovers an irrebuttable presumption, or a judicial or administrative order declaring paternity. This RULE is superior to RULES 1, 2, and 3.

* **In highly unusual cases** where genetic testing is not available to exclude an AF or PF, it may be possible to exclude the AF or PF by an action in district court or—upon a determination by the CSED staff attorney based on the facts of the case—to proceed as if the AF or PF were excluded.

AF = alleged father (no presumption)
PF = presumed father (rebuttable presumption)

PROCEDURES

The terms **ALJ** and **OALJ** as they appear in these PROCEDURES refer to the CSED Administrative Law Judge, and the CSED Office of the Administrative Law Judge, respectively. The OALJ performs the CSED's administrative "clerk of court" function.

In third-party obligee cases see section CS 602.2 for proper procedures in all steps involving the "mother" below.

Except where otherwise noted the following procedures apply to the same man from beginning to end.

Caseworker

1. **NPR Package.** Takes the following actions as in section CS 605.2:
   a. Determines whether a combined NPR-NOCS package is appropriate.
   b. Prepares and issues an NPR-NOCS or NPR package. (NOTE: The documents in the package differ from those in the single-allegation package as follows:
      > The NPR must be the multiple-allegation version
      > The Admission of Paternity and Application for Paternity Consent Order is not included.)
   c. Obtains service of the notice package.
   d. Where an NPR-NOCS package is issued, follows the applicable procedures in section CS 401.3 or CS 401.6 relating to the mother or third-party custodian.

2. **Response to the NPR.** Takes action corresponding to the alleged/presumed father's timely response to the NPR as follows:

   (The NOTES in section CS 605.2 regarding "timely response" and "responder's intent" apply here as well.)

   a. **No Response.** If the alleged/presumed father does not contact the CSED, or contacts the CSED but does not follow with action appropriate to the NPR, follows the procedures in section CS 606.3 for preparing and forwarding to the OALJ form CS-606.3A, Affidavit and Motion for Genetic Testing Hearing; proceeds to step 9.

   b. **Agreement to Testing, Request for Hearing, Proof Against Paternity.** If the alleged/presumed father returns a signed Consent to Genetic Testing, **or** contacts the CSED and orally agrees to genetic testing, **or** returns a signed Statement Concerning Paternity (or an equivalent document) requesting a hearing, **or** contacts the CSED and proves he could not be the child's father or proves another defense to the CSED action, proceeds as in section CS 605.2. **Returns to this section if at any time a situation occurs that, in a single-allegation case, would constitute a default for this alleged or presumed father, and proceeds as follows:**

  - If the alleged/presumed father fails to appear for a hearing to determine whether he should be ordered to submit to genetic testing, proceeds to step 10a.
  - If the alleged/presumed father fails to appear for genetic testing after being ordered to do so by a Genetic Testing Subpoena or by an order following the Consent to Genetic Testing, proceeds to step 14.

3. **Case Reduced to One Possible Father; Loss of Presumption.** If at any point in these procedures the multiple-allegation case becomes a single-allegation case against this
   - **alleged father**, proceeds to the appropriate step in section CS 605.2 and continues contested case processing as directed.
   - **presumed father**, updates SEARCHS via the CHL screen to show the date and method of paternity establishment, and proceeds with the NOCS case as in step 4.

   If at any point in these procedures a presumed father rescinds an acknowledgment of paternity within 60 days after it is signed, and a basis for an allegation remains, proceeds against the man as an alleged father.

4. **Proceeding with the NOCS Case.** Upon the resolution of paternity, takes action in section CS 401.3 or CS 401.6 according to the alleged/presumed father's timely response to the NOCS. If necessary in conjunction with step 5, notifies the OALJ to reactivate a NOCS hearing request as in section CS 605.2. Coordinates the timing of the NOCS and paternity actions to meet federal expedited process requirements as in section CS 605.2.

OALJ

5. **Request for a NOCS Hearing.** Upon receipt of a request for hearing on the NOCS, checks SEARCHS to determine if paternity has been established. If so, proceeds with hearing actions in the NOCS case as in section CS 401.3 or CS 401.6; if not, delays any processing of the hearing request until paternity is resolved, and advises the caseworker of the request and the delay.

6. **Request for a Genetic Testing Hearing.** Upon receipt of either
   - a Statement Concerning Paternity from an alleged/presumed father requesting an NPR hearing, or
   - a properly completed Affidavit and Motion for Genetic Testing Hearing,

   proceeds according to the instructions in section CS 605.2 for processing a hearing request, except as noted below.

   EXCEPTION: If the alleged/presumed father fails to appear for the hearing, the ALJ does not deem the request withdrawn, but proceeds with the hearing and decides the issues based on the evidence provided. (Note that in the case of a hearing requested by the alleged/presumed father, the hearing proceeds by authority of a special CSED request included in the witness and exhibit list in all multiple-allegation cases.)

NOTE: Hearing Issue. The issue to be determined at hearing is whether the CSED can order the alleged/presumed father to submit to genetic testing. In a multiple-allegation case, authority to order testing must be based on either (1) a reasonable probability of sexual contact during the probable period of conception, or (2) the existence of a rebuttable presumption.

[steps 7 and 8 deleted]

Caseworker

9. **Pre-Hearing Contact; Hearing Preparation.** Prior to the hearing contacts the alleged/presumed father. Discusses the facts or issues of the paternity case (claimed defenses, voluntary testing, elements to be contested at hearing), and coordinates any agreed genetic testing, as in section CS 605.2. If a hearing is still necessary, completes the hearing checklist, prepares exhibits, arranges for testimony, participates in discovery, and attends and appears as a witness at the hearing; requests entry of any applicable oral order or of a judgment for testing costs as in section CS 605.2.

10. **Implementing the Hearing Results.** Upon receiving the results of the hearing takes action in 10a or 10b below; note that the ALJ will proceed with the hearing, and will issue a determination, regardless of whether the alleged/presumed father appears for the hearing.

    a. If the ALJ has determined the alleged/presumed father should be required to submit to genetic testing schedules genetic testing as in section CS 605.2, and proceeds to step 11.

    b. If the ALJ has determined there is no "reasonable-probability" basis for ordering genetic testing, dismisses the NOCS as in section CS 401.3 or CS 401.6, updates SEARCHS (CHL and CAP screens) to exclude the alleged/presumed father, and proceeds with the other allegations in the case. (NOTE: If after consultation with the CSED staff attorney further action on **this** allegation appears warranted, pursues and obtains additional evidence, issues a new NPR-NOCS, and returns to step 2.)

Caseworker and OALJ

11. **Genetic Testing Subpoena.** Generate and issue a Genetic Testing Subpoena according to the procedures in section CS 605.2 (caseworker--prepares, submits to the OALJ, specifies service; OALJ--obtains the ALJ's signature, issues, secures service, sends a copy to the caseworker).

Caseworker

12. **Appearance of the Persons to be Tested.** Monitors the genetic testing appointments for the appearance of the alleged/presumed father, the mother, and the child, as in section CS 605.2. If the alleged/presumed father appears for testing, proceeds to step 13. If the alleged/presumed father fails to appear for testing, proceeds to step 14.

13. **Processing the Genetic Testing Results.** Receives and processes the testing results as in section CS 605.2, with the following exceptions:

    a. If the genetic testing results are positive, includes in the results package to the father (along with the other documents required in section CS 605.2) form CS-606.2A, Admission of Paternity and Application for Paternity Consent Order, **multiple allegation version**, accompanied by the CSED information sheet, "Paternity Information for Parents." (NOTE: The single-allegation version of the Admission is not acceptable.)

    b. If the genetic testing results are negative, does not require the mother to provide the names of other possible fathers, but instead proceeds (or continues) with the appropriate steps for the remaining allegations.

14. **Enforcing the Appearance of the Alleged/Presumed Father.** If the alleged/presumed father fails to appear for testing after being ordered to appear by a Genetic Testing Subpoena **or** by a CSED decision and order following a signed Consent to Genetic Testing, consults with the CSED staff attorney to determine the appropriate remedy; works with the attorney in obtaining a district court order or in taking other actions to compel submission.

    NOTE: Perseverance Required. Unless or until **another** alleged/presumed father in the case genetically tests positive, it is essential to pursue testing of this man until a sample is obtained. This may involve administrative contempt procedures, license suspension, court-ordered physical enforcement by the sheriff, or any combination of these.

SUPERSEDES

CS 606.1, Paternity Default Order, January 11, 1998

REFERENCES

Sections 40-5-231 through 40-5-237, and 40-6-101 through 40-6-118, MCA.

POLICY

Applicability. The procedures in this section apply when the alleged father in a single-allegation paternity case "defaults" on a CSED order or notice by acting as described in one of the following situations:

(1) The alleged father fails to timely respond to a properly served Notice of Parental Responsibility (NPR). To "respond" to an NPR the alleged father must either
  - return a signed Statement Concerning Paternity (or its equivalent) denying paternity and requesting a hearing, or
  - return a signed Consent to Genetic Testing agreeing to submit to genetic testing, waiving the right to hearing, and agreeing to entry of an order declaring paternity if he fails to submit to testing as agreed.

(2) The alleged father fails to appear for a properly scheduled CSED hearing to determine whether there is reasonable probability he may be the natural father of the child.

(3) The alleged father fails to submit to properly ordered genetic testing **and** there is reasonable cause to believe he may be the natural father of the child; failure to submit may be failure to appear for a properly scheduled drawing, or, upon appearance, failure to permit the drawing. The CSED may order genetic testing based on a signed Consent to Genetic Testing (with or without service of the NPR) or through a Genetic Testing Subpoena.

Procedures for properly serving the NPR, determining "timely response," scheduling a hearing, ordering genetic testing, scheduling the drawing for genetic testing, and determining reasonable cause are described in sections CS 605.2, CS 604.1, and CS 602.2.

Note that in a multiple-allegation case the concept of default does not apply (see section CS 605.3 for proceeding against an alleged/presumed father in one of the above situations in a multiple-allegation case); however, if an alleged father in a multiple-allegation case acts as in (1), (2), or (3) above **and** the case is later reduced to a single-allegation case by exclusion of all other allegations, the procedures in this section for entering a default then apply.

Effect of Paternity Default Order. When the conditions in the preceding paragraphs are met, the CSED will issue a Paternity Default Order. The order establishes paternity--the legal relationship of father and child--for all purposes in the same manner as if the matter had been decided by a district court trial. A CSED default order is conclusive and, unlike a presumption of paternity, cannot be rebutted.

However, like a district court default judgment, this default order can be set aside under some circumstances. The basic circumstances for setting aside a CSED paternity default are as follows:

(1) Excusable neglect--the alleged father shows a good, reasonable excuse for his default (for example, he was physically incapacitated at the time)
(2) Fraud--the conditions for a default were fraudulently presented (for example, the child's mother concealed the existence of other possible fathers who had not been excluded by genetic testing, and the CSED proceeded with the default in the belief the case was a single-allegation case)
(3) Lack of jurisdiction--the CSED did not have proper jurisdiction over the alleged father (for example, the alleged father resides out of state and has never been in the state, and the child was conceived out of state)
(4) Improper or insufficient service--the CSED's notice, order, or subpoena was not served on the alleged father in accordance with applicable law; or, the CSED cannot document or prove proper service (for example, there is no sheriff's return in the file)
(5) Prior judgment--the CSED entered a default without the knowledge that a court had previously decided the issue of paternity (the prior order takes precedence).

PROCEDURES

Caseworker

1. **Type of Default.** Upon identifying a situation where a paternity default would apply (see Applicability, POLICY), proceeds as follows:
   a. **Default on NPR.** If the alleged father has failed to timely respond to the Notice of Parental Responsibility (NPR), proceeds to step 2.
   b. **Default on Genetic Testing.** If the alleged father has failed to submit to ordered genetic testing (by failing to appear for a scheduled drawing, or appearing but failing to permit the drawing), proceeds to step 3. (Note that if no CSED order was issued for genetic testing, failure to submit to agreed testing does not constitute a default under this step. However, a default under step 1a may still apply.)
   c. **Default on Hearing.** If the alleged father has failed to appear for a hearing requested by him under section CS 605.2, then, upon receipt of an order issued in step 4 dismissing the hearing request, proceeds to step 2. (Note that failure to appear for a hearing requested by the CSED under section CS 605.3 does not constitute a default, as the hearing will proceed without the alleged father.)

2. **Verifying Service of the NPR.** Verifies the case file contains documentation that the NPR was properly served. If so, proceeds to step 5. If not, returns to section CS 605.2 and follows the procedures for re-service of the NPR and subsequent CSED actions.
   Documentation: The sheriff's return; the certified mail receipt; or a signed acknowledgment.

3. **Verifying Service of the Genetic Testing Order.** Verifies the case file contains documentation as follows (all items):

(1) That the CSED issued and properly served an order for genetic testing.
Documentation: A copy of the decision and order contained in the Consent to Genetic Testing, with the certificate of mailing; or a copy of the Genetic Testing Subpoena with proof of personal service or acknowledgment.

(2) That the CSED notified the alleged father of the date, time, and place of the drawing.
Documentation: A copy of the Genetic Testing Subpoena or Genetic Testing Scheduling Letter.

(3) That the alleged father did not appear for, or did not permit, the scheduled drawing.
Documentation: (none required--the caseworker's sworn statement prepared in step 5 suffices).

(4) That there is reasonable cause to believe the alleged father is the natural father of the child.
Documentation: The signed and notarized Paternity Affidavit from the mother, or documentation showing some other basis for reasonable cause as described in section CS 602.2.

If all of the above documentation exists, proceeds to step 5. If not, returns to section CS 602.1 or 605.2, as appropriate, and recommences procedures as necessary.

Office of the Administrative Law Judge (OALJ)

4. **Dismissing the Hearing Request/Verifying Notification of Hearing.** Upon failure of the alleged father to appear for a hearing, deems the alleged father's hearing request withdrawn and closes the hearing. Verifies the file contains documentation that the CSED notified the alleged father of the hearing date, time, and place; upon verification, issues an order dismissing the hearing request, sends copies to the alleged father, the obligee and the caseworker, and proceeds to step 6.
Documentation: The Notice and Order for Genetic Testing Hearing with the certificate of mailing to the alleged father's last known address.

Caseworker

5. **Initiating the Paternity Default Order.** Completes forms CS-606.1A, Application for Paternity Default Order and Paternity Default Order, and forwards the forms to the OALJ together with a certified copy of the abstract of the birth certificate, a copy of the NPR (if issued), and any SEARCHS stuffers required. Selects the appropriate language for an amended or substitute birth certificate, if appropriate (see step 9). Proceeds to step 10 or step 11 as appropriate.

OALJ

6. **Issuing the Paternity Default Order.** Upon receipt of the application and order, obtains the signature of the Administrative Law Judge (ALJ) on and issues the Paternity Default Order.

7. **Opportunity to Show Good Cause.** Mails copies of the Paternity Default Order to the alleged father, the obligee, the mother if she is not the obligee, and the caseworker. Calendars for 10 working days plus 3 calendar days following the date of mailing to the alleged father.

   NOTE: Effective Date of Paternity Default Order. A default order does not become effective until 10 days after the order is served on the alleged father. If the order is served by mail an additional 3 days is allowed. During this 10-to-13-day time span, if the alleged father can show "good cause" for his failure, the order is withdrawn and procedures will recommence at the appropriate step. "Good cause" is a determination made by the Administrative Law Judge on the facts of the case; it is generally a lesser standard than the "excusable neglect" standard necessary to set aside final orders and judgments.

8. **Processing a Good Cause Claim.** If the alleged father timely submits a sworn statement claiming good cause for the particular failure cited in the Paternity Default Order, obtains a written determination from the ALJ granting or denying the claim. Mails copies of the determination to the alleged father, the obligee, the mother if she is not the obligee, and the caseworker, and retains the original for the case file.

   If the claim is granted, takes action as follows:

   a. If the default was for failure to respond to the NPR or to appear for a scheduled genetic testing hearing, sets or resets a hearing date and issues a Notice and Order for Genetic Testing Hearing as in section CS 605.2.

   b. If the default was for failure to submit to genetic testing ordered by the CSED, notifies the caseworker to reschedule the genetic testing appointments and to proceed with the paternity case as in section 605.2; if the order for testing was a Genetic Testing Subpoena, also proceeds with the caseworker as in CS 605.2 to issue and serve a new subpoena.

   If the alleged father does not timely submit a claim for good cause, or if the claim is denied, proceeds to step 9.

9. **Updating the Birth Records.** If the child's birth records are located in Montana, files a copy of the Paternity Default Order with the Montana Office of Vital Statistics; upon the request of the mother or father, also orders the Office of Vital Statistics to prepare an amended or substitute birth certificate consistent with the Paternity Default Order.

(Requests a "substitute" birth certificate if a different man's name is currently shown; requests an "amended" birth certificate if no man's name is currently shown.)

NOTE: No Change to Birth Records of Other State. The CSED will not file the Paternity Default Order in another state. If the child's birth records are located in another state, the child's mother or father may elect to file the order there independently. The CSED's failure to file the order in another state does not affect the validity or conclusiveness of the paternity determination.

Caseworker

10. **Processing the Paternity Default Order.** Upon receiving a copy of the issued Paternity Default Order from the OALJ, waits for the order to become final (see step 7), then proceeds as follows:

    Performs the necessary SEARCHS processing on the CHL and CAP screens to establish the alleged father as the father; if applicable, notifies the public assistance agency of the paternity establishment. Proceeds to establish a support order as in section CS 401.3 or CS 401.6, or to enforce any support order entered concurrently with the paternity order (see section CS 605.2 for coordination of CSED paternity and support orders).

11. **Proceeding from a Good Cause Determination.** Upon being notified by the OALJ of a determination of good cause, follows the appropriate procedures in section CS 605.2 beginning with pre-hearing contact and preparation, or in section CS 604.1 beginning with genetic testing scheduling.

SUPERSEDES

CS 606.2, Paternity Consent Order, January 11, 1998.

REFERENCES

Sections 40-5-231 through 40-5-237, and 40-6-101 through 40-6-118, MCA; Rule 301, Montana Rules of Evidence

POLICY

Applicability. Procedures in this section apply whenever the CSED receives a signed Admission of Paternity from an alleged or presumed father in a paternity case.

Effect of Paternity Consent Order. When the conditions given in these PROCEDURES for accepting an Admission of Paternity are met, the CSED will issue a Paternity Consent Order. The order establishes paternity--the legal relationship of father and child--for all purposes in the same manner as if the matter had been decided by a district court trial. A properly filed consent order is conclusive and, unlike a presumption of paternity, cannot be rebutted. It is binding on the alleged or presumed father who has signed the Admission of Paternity even if he is a minor.

Basis in Informed Consent. Although the consent order is conclusive, it may be set aside or invalidated by a reviewing court if it is shown the order was not based on the "informed consent" of the alleged/presumed father. In a paternity case there are two areas where the requirements of informed consent apply:

(1) Period of conception--the alleged/presumed father must know or be informed of the child's probable period of conception or date of birth.

(2) Other possible fathers--if applicable, the alleged/presumed father must know or be informed of the existence of other possible fathers in the case.

If the alleged/presumed father is not informed of the facts of the case in these areas, he may conclude erroneously he is the natural father. If, however, he is informed of the facts, he may then conclude he must, may, may not, or must not be the natural father. If he signs the Admission having this knowledge, a consent order may be entered based on his informed consent. (Of course, in multiple-allegation cases CSED policy requires positive genetic testing results, or exclusion of all other possible fathers, in addition to informed consent.)

PROCEDURES

Caseworker

1. **Verifying Jurisdiction/Proper Version of the Admission Form.** Upon receipt of a completed, signed, and notarized Admission of Paternity and Application for Paternity Consent Order from an alleged or presumed father in a paternity case, verifies the CSED has or can obtain jurisdiction in the case. If so, proceeds to step 2; if not, refers

the case to the other state as in section CS 605.2 and takes no further action in this section. (Note that in cases where a Notice of Parental Responsibility (NPR) has been served, the CSED should already have jurisdiction over the individual.)

NOTE: Older Versions of Admission Not Acceptable. Admissions of Paternity sent to alleged or presumed fathers before July 1, 1997, do not contain the language required by current law, nor were they accompanied by the information on parents' rights and responsibilities that is now required. If a pre-July 1997 Admission is received, the caseworker should immediately send the alleged/presumed father the current form (accompanied by the required CSED information sheet, "Paternity Information for Parents") explaining the new form is now required, and requesting he complete and return the new form as soon as possible.

2. **Requirements for Single- and Multiple-Allegation Cases.** Upon verification of jurisdiction, checks the paternity facts of the case and proceeds as follows:

   a. In a single-allegation case (except as noted below) proceeds to step 3.

      EXCEPTION: If the case is being treated as a single-allegation case because all other alleged/presumed fathers have now been excluded by genetic testing, the CSED requires the informed consent language contained in the "multiple-allegation" version of the Admission (see NOTE after step 2b(i)). Positive genetic testing results for the admitting man in this situation are not required; procedures--other than the testing requirement--in step 2b(i) apply.

   b. In a multiple-allegation case proceeds as follows:

      (Note that even though the CSED does not send an Admission form to an alleged or presumed father in a multiple-allegation case, the man may have received the Admission before the CSED was aware of other allegations.)

      i. **If the Admission is accompanied or preceded by positive genetic testing results,** checks to make sure the Admission received is the multiple-allegation version. (If the EXCEPTION in step 2a applies and the admitting man did not undergo genetic testing, also checks to make sure the Admission does not contain a reference to positive genetic testing results.) If the form is acceptable, proceeds to step 3; if not, prepares the proper version of form CS-606.2A and sends it to the father, requesting he sign it in front of a notary and return it. (In preparing the new Admission, includes the father's agreement to a judgment for testing costs, if appropriate--see the policy in section CS 604.1, Genetic Testing.) If the proper version is returned, proceeds to step 3; if not takes no further action in this section.

         NOTE: "Multiple-Allegation" Version of Admission. This version of the Admission of Paternity contains a required declaration of informed consent stating the father knows that one or more other men were named as possible fathers.

ii. **If the Admission is not accompanied or preceded by positive genetic testing results,** explains to the admitting man that, when there are other possible fathers, the Admission is not acceptable unless it is supported by positive genetic testing results. Attempts to gain the admitting man's agreement to testing and proceeds as in section CS 602.1 or 605.3 with the next appropriate action in the case. Returns to this section (step 2b(i), or 2a) if the admitting man submits to testing and the results are positive, or if all the other allegations in the case are excluded by genetic testing.

3. **Initiating the Paternity Consent Order.** Prepares form CS-606.2D, Paternity Consent Order, and forwards it to the Office of the Administrative Law Judge (OALJ) together with
   - the original Admission of Paternity and Application for Paternity Consent Order (correct version),
   - a certified copy of the abstract of the birth certificate (if the child was born in Montana), and
   - any SEARCHS stuffers required.

   (In a multiple-allegation case where the EXCEPTION in step 2a applies and the admitting man did not undergo genetic testing, adjusts the form to remove the reference to positive genetic testing results.)

OALJ

4. **Issuing the Paternity Consent Order.** Upon receipt of a consent package prepared in step 3, obtains the signature of the Administrative Law Judge (ALJ) on and issues the Paternity Consent Order. Mails copies to the alleged/presumed father, the obligee, the mother (if she is not the obligee), and the caseworker.

[step 5 deleted]

6. **Updating the Birth Records.** If the child's birth records are located in Montana, files a copy of the Paternity Consent Order with the Montana Office of Vital Statistics; also, if the father's name is not shown on the birth certificate, orders the Office of Vital Statistics to prepare an amended or substitute birth certificate consistent with the Paternity Consent Order. (Requests a "substitute" birth certificate if a different man's name is currently shown; requests an "amended" birth certificate if no man's name is currently shown.)

   NOTE: No Change to Birth Records of Other State. The CSED will not file the Paternity Consent Order in another state. If the child's birth records are located in another state, the child's mother or father may elect to file the order there independently. The CSED's failure to file the order in another state does not affect the validity or conclusiveness of the paternity determination.

Caseworker

7. **Processing the Paternity Consent Order.** Upon receiving a copy of the Paternity Consent Order from the OALJ, performs the necessary SEARCHS processing on the CHL and CAP screens to establish the alleged father as the father; also, if applicable, enters a SEARCHS case note for the consent order issued with fees, and sets up a fee account as in section CS 604.1. If applicable, notifies the public assistance agency of the paternity establishment. Proceeds to section CS 401.3 or 401.6, or resumes procedures begun in section CS 605.2, to establish a support order.

   NOTE: Establishment by Consent Order **and** Genetic Testing Presumption. If paternity is being established by consent order based on or in addition to a genetic testing presumption, the caseworker should update SEARCHS to show the establishment by consent order, even if the presumption has already been entered and the establishment (by genetic testing) is already shown.

SUPERSEDES

CS 606.3, Motion for Genetic Testing Hearing, September 30, 1995

REFERENCES

Intent of section 40-5-233, MCA

POLICY

Applicability. The procedures in this section are used when all of the following conditions apply:

(1) A Notice of Parental Responsibility has been served
(2) The alleged or presumed father has not returned a signed Statement Concerning Paternity (or its equivalent) requesting a hearing
(3) The alleged or presumed father has not returned a signed Consent to Genetic Testing
(4) It appears genetic testing will be necessary to resolve the paternity case.

NOTE: Option to Wait for Voluntary Testing. If the conditions above apply but the alleged or presumed father has agreed to genetic testing and, in the caseworker's discretion, is likely to appear for and cooperate with testing, the CSED may wait until after the scheduled testing date to determine if the procedures in this section are needed.

Purpose of Motion for Genetic Testing Hearing. The purpose of the motion for a genetic testing hearing is to allow the CSED to initiate procedures to compel genetic testing in a case where genetic testing is necessary to resolve paternity and the alleged or presumed father does not request a hearing on his own. If at any time in the case the alleged or presumed father signs a Consent to Genetic Testing, or actually submits to genetic testing, the motion for hearing is not needed.

Single- and Multiple-Allegation Cases. The need for genetic testing to resolve paternity (condition (4)) applies most commonly in multiple-allegation cases, where default and consent (non-tested) are not available as options. However, in single-allegation cases there are also certain combinations of case facts that would lead the CSED to move for a genetic testing hearing, as in the example below:

> EXAMPLE: In a single-allegation case where conditions (1) through (3) apply, if the mother denies the paternity of the alleged or presumed father and the CSED cannot obtain other allegations from the mother and cannot close the case (the obligee is a third-party custodian, or public assistance is involved), genetic testing would be the only way to move the case forward. (Note that, because of the mother's denial the CSED would not be in a position to establish the paternity of the alleged or presumed father by default, consent, or presumption.)

Generally, situations fitting the above example will arise when there is a third-party obligee, or the multiple-allegation case has been reduced to a single allegation with the remaining allegation being a presumed father, or the alleged or presumed father is the applicant for services.

Strength of Mother's Denial. When the mother denies the paternity of an alleged or presumed father in a CSED paternity case, the caseworker must determine whether the denial has sufficient substance to prohibit paternity establishment in a single-allegation scenario. Consultation with the CSED staff attorney is recommended. Ideally denials should be submitted in writing.

PROCEDURES

Caseworker

1. Upon identifying case where conditions for motion for genetic testing hearing apply (see POLICY), prepares and has notarized form CS-606.3A, Affidavit and Motion for Genetic Testing Hearing, and forwards to Office of the Administrative Law Judge (OALJ) together with
    - copy of Notice of Parental Responsibility,
    - if motion based on mother's denial in single-allegation case, copy of mother's written denial (if any), and
    - stuffers for mother, alleged/presumed father, and their attorneys.

Caseworker and OALJ

2. Proceeds with hearing as in section CS 605.3 or, for motion based on mother's denial, as in section CS 605.2.

    NOTE: Issue at Hearing. The issue at hearing after a CSED motion for hearing, regardless of the multiple-allegation or single-allegation basis of the motion, is whether there is **either** a reasonable probability of sexual intercourse during the probable period of conception **or** a probable existence of a presumption.

Caseworker

3. If hearing determines alleged or presumed father should be ordered to submit to genetic testing, proceeds with Genetic Testing Subpoena as in section CS 605.2; proceeds with testing as in section CS 604.1, including processing of results.

    If alleged/presumed father or mother fails to appear for, or submit to, scheduled drawing, takes steps to compel submission by district court order or CSED administrative remedy, as in sections CS 605.2 and 605.3. Does not attempt to enter "default" for failure to appear, even in single-allegation case.

SUPERSEDES

CS 606.4, Referral to District Court, September 30, 1995

REFERENCES

Sections 40-5-236 and 40-5-237, MCA.

POLICY

Applicability. The procedures in this section apply when all of the following conditions are met:

(1) The CSED has served a Notice of Parental Responsibility (NPR) on the alleged or presumed father, **or** has received a signed Consent to Genetic Testing from him
(2) The CSED is establishing the paternity of an alleged or presumed father based on genetic testing results of 95% or higher statistical probability
(3) The alleged or presumed father continues to deny paternity.

NOTE: Referral Not Available from Informal Process. If the alleged or presumed father agreed to genetic testing but never signed a Consent to Genetic Testing and was never served with an NPR, there is no contested CSED case to be referred. If the alleged/presumed father wishes to continue to deny paternity in this situation, he must file a petition of nonpaternity in district court seeking rebuttal of the presumption.

No Delay in Establishing Support Obligation. The CSED does not delay or interrupt its administrative support order establishment procedures when the paternity issue in a case is referred to district court. The alleged or presumed father--now the obligor--may ask the court to stay the CSED's NOCS action, but absent an order from the court the CSED will proceed to establish and enforce a support obligation for the obligor. If the court overcomes the presumption created by the original genetic testing results, the CSED will--as a party to the proceeding--receive notice of the determination, and will at that time terminate any support obligation that has been established.

PROCEDURES

Caseworker

1. Upon being contacted by alleged/presumed father continuing to deny paternity after receiving positive genetic testing results (95% or higher), proceeds as follows:
    a. If contact is in writing and is equivalent to form CS-606.4A, Request for Referral to District Court, sends information sheet (second page of Request form) to alleged/presumed father with short cover letter acknowledging receipt of request; proceeds to step 2.
    b. If contact is not in writing, or is not equivalent to form CS-606.4A, Request for Referral to District Court, prepares and sends to alleged/presumed father form CS-606.4A.

2. Upon receipt of completed Request for Referral to District Court within 20 days after service of genetic testing results, enters appropriate SEARCHS case note and refers

Request to CSED staff attorney for action. (If Request received later than 20 days after service of testing results, consults with staff attorney about whether to proceed with Request.)

CSED Staff Attorney

3. Upon receipt of Request for Referral to District Court from caseworker, determines whether hearing has been held in case.

   a. If hearing has been held, prepares following or equivalent documents referring matter for determination at trial:
      (1) Petition for referral
      (2) Notice of referral.
      Checks SEARCHS for any reason to protect participants' personal information in above documents; if found, takes appropriate steps to protect information before proceeding.

      Sends above documents to clerk of district court with copies of notice of referral and addressed envelopes for alleged/presumed father, mother, any third-party obligee, and OALJ; requests that clerk of court file originals, assign cause number, conform copies, and send conformed copies in envelopes provided. **Separately, sends additional copy of notice of referral directly to alleged/presumed father by certified mail, return receipt requested.** Enters appropriate SEARCHS case note(s) for steps taken.

   b. If no hearing has been held, prepares administrative record in case according to section 40-5-236(2), MCA, as applicable; includes in record any Consent to Genetic Testing. For each participant, checks SEARCHS for any reason to protect address or other personal information contained in administrative record. If reason found, takes appropriate steps to protect identified information before proceeding.

      Prepares and sends petition, notice, and copies of notice to clerk of district court with request for processing as in step 3a **except,**
      - includes certified copy of administrative record in petition for referral, and
      - does not request copy of notice be sent to OALJ.

      Sends additional copy of notice of referral, along with copy of administrative record, directly to alleged/presumed father by certified mail, return receipt requested. Enters SEARCHS case note(s). Skips to step 5.

OALJ

4. Upon receipt of conformed copy of notice of referral from district court, prepares administrative record in case according to section 40-5-236(2), MCA. For each participant, checks SEARCHS for any reason to protect address or other personal information contained in administrative record. If reason found, takes appropriate steps to protect identified information before proceeding.

Files certified copy of administrative record, with appropriate transmittal document referencing cause number, with district court; sends copies of administrative record to CSED staff attorney and alleged/presumed father, and enters appropriate SEARCHS case note.

CSED Staff Attorney

5. Represents CSED in paternity trial; arranges for expert testimony on genetic testing as needed.

Caseworker

6. Testifies if called as witness in paternity trial.

SUPERSEDES

[new section]

REFERENCES

MCA § 40-5-416; ARM 46.30.507(7).

POLICY

Purpose of Overcollection Agreements. The CSED uses overcollection agreements to legally apply overcollected amounts to future arrears or existing debts in situations where the amounts must normally be refunded. There are two types of overcollection agreements:

(1) Income withholding--these agreements are for overcollections that result from annualization by the employer (withholding in 26 or 52 pay periods--see Special Annualization Considerations below). Overcollections are applied to arrears that accrue in future months as a result of annualized withholding.

(2) Non-income withholding--these agreements are for overcollections that result from two or more collection actions for the same period of debt. Overcollected amounts are applied to debt accrued after the specified debt period, or to arrears accrued in future months.

Conditions for Overcollection Agreements. Overcollection agreements are appropriate **only** when all of the following conditions apply:

(1) Amounts are collected that cannot be posted to an existing SEARCHS account.
(2) The overcollection is not automatically refunded by SEARCHS.

(When conditions (1) and (2) are met, SEARCHS will include the amount of the overcollection on a list automatically generated for caseworker review and resolution.)

(3) There is a reasonable expectation of a future delinquency, OR additional debt has already accrued to which the collection cannot be applied without the obligor's authorization.

EXAMPLE: The obligor is a construction worker who is employed 7 months a year. Each year the obligor falls behind in child support payments during the off-season. The CSED obtained a writ of execution for support owed from January through December of 1995. After the writ was issued, the CSED received a federal tax offset that paid all support owed for the same period. Then, the CSED received money from the writ. An agreement may be appropriate to keep the writ money to cover the obligor's support obligation during the next off-season.

Future Delinquency. The CSED may have a reasonable expectation of a future delinquency if according to the facts of the case there may be

- a future undercollection by income withholding because of annualization;
- a future undercollection by income withholding because of federal Consumer Credit Protection Act limits;

- a future undercollection under an approved payment plan for less than current support;
- future unemployment related to seasonal work;
- future unemployment consistent with a personal history of unemployment.

In predicting a future delinquency the caseworker should also take into account the general payment history, the employer's withholding compliance record, and the size of and reason for the debt that was the basis for the collection.

Special Annualization Considerations. An employer may "annualize" payments under an income withholding order when the employer's pay frequency is based on some time period other than a month. Annualized payments for any given month will total either more than or less than the ordered monthly withholding, but over the course of 12 months the withheld amount will be equal to the ordered amount.

In cases where annualization creates arrears amounts, or "annualization deficits," in certain months, the CSED will apply any **later** overcollections from annualization to those annualization deficits. An overcollection agreement is **not** required for this action. However, if the overcollection exceeds any existing annualization deficits, the agreement **is** required for the CSED to apply the remainder of the collection to annualization deficits in future months.

Overcollections Not Applicable to Current Support. In applying an overcollection to a future month, the caseworker must wait for arrears to accrue for that month, then request an adjustment to apply the money to the arrears account. Except in unusual situations, CSED accounting policy prohibits application of overcollected amounts to existing or future current support accounts.

Agreement Not Applicable to Federal Tax Offsets. Although, technically, the language of the overcollection agreement would allow the CSED to keep and apply an overcollection by federal tax offset (FTO), **it is the CSED's policy to refund all FTO overcollections.** Of course, this does not prevent the CSED from performing reasonable adjustments to previous non-FTO collections, so the FTO declining balance can absorb the FTO collection. See the following EXAMPLE:

EXAMPLE: A debt is certified at $500 for federal tax offset. Shortly before the FTO collection is received, the CSED collects $300 on a writ for the same period, and applies the proceeds to the FTO-certified debt. When the FTO collection for the full amount comes in, it overpays the declining balance of the certified debt by $300. Instead of refunding the $300, the CSED may wish to move the writ collection amount out of the FTO account, apply the FTO collection to the restored $500 debt, and seek an overcollection agreement to apply the writ collection to another debt (anticipated future arrears, for example). NOTE: This type of adjustment would be "reasonable" only if the two collections were received within a short time of each other, and all other conditions for an overcollection agreement on the writ money applied.

Informal Consent. In certain case-specific situations the CSED collects amounts--usually by regular payment or income withholding--intended by the payor for future support.

Examples are teachers' payments for summer months, and payments regularly made a few days before the first of the month. In these cases an overcollection agreement is not needed to apply the payment to future support; however, the caseworker should ensure there is enough evidence of intention (such as payment history) in the case file to justify the action.

PROCEDURES

The following procedures include only general instructions on performing necessary adjustments; communications with TAPP will take different forms depending on the specific pay source involved.

Caseworker

1. Upon identifying collection or portion of collection that meets first two conditions for overcollection agreement (SEARCHS cannot automatically apply or refund the amount),
   - for collection by income withholding proceeds to step 2.
   - for collection by other than income withholding proceeds to step 3.

2. Where income withholding is in place for obligor, determines whether overcollected amount is result of annualization, using questions (1) through (3) below. If answer to all three questions is "yes," assumes overcollection is result of annualization; proceeds to step 2a. If answer to any question is "no," assumes overcollection is not result of annualization; procedures in this section do not apply.
   (1) Are all payments in current month by income withholding?
   (2) Are all payments in current month from same employer?
   (3) Are payments consistent over past six months (or since withholding order took effect, if less than six months ago)?

   a. If annualization deficit exists for any past month(s), applies overcollection to those accounts using regular SEARCHS accounting procedures. NO OVERCOLLECTION AGREEMENT IS NEEDED.

   b. If no annualization deficit exists, or if any portion of overcollection amount remains after application to existing deficit(s), pursues overcollection agreement in step 4.

3. For collection by other than income withholding, determines whether third condition for overcollection agreement applies (expectation of future delinquency, or existing debt not authorized for this collection). If so, proceeds to step 4. If not, takes no further action; procedures in this section do not apply.

4. Immediately upon determining that overcollection agreement would apply, takes appropriate action to prevent SEARCHS from refunding collection by default (specific actions may vary depending on pay source, TAPP procedures, and available

SEARCHS accounting selections). Retains hold on collection until action can be taken in step 7 or 8, and proceeds as follows:

a. If overcollection is result of income withholding annualization, prepares form CS-706.1A, income withholding version (Agreement to Apply Funds Collected Under Withholding Order).

b. If overcollection is not result of income withholding, prepares form CS-706.1A, non-income withholding version (Agreement to Apply Funds Not Collected by Withholding Order).

5. Prepares cover letter explaining use of Agreement and requirements for notarization and return, and sends with Agreement to obligor by regular mail. Enters SEARCHS casenote specifying date and type of Agreement sent (income withholding or non-income withholding); sets tickler for 10 days after date of mailing.

   NOTE: Telephone Contact Prior to Mailing. The caseworker may wish to contact the obligor by telephone before sending the written Agreement, to explain or negotiate the Agreement or to find out if the obligor is willing to sign it. (See CAUTION on oral agreements in step 6.)

6. If obligor contacts CSED to discuss Agreement, explains options and attempts to obtain signed Agreement. For non-income withholding Agreement, if obligor is willing to apply only a portion of the overcollected amount, prepares and sends revised Agreement specifying dollar amount obligor is willing to apply.

   CAUTION: Oral Agreements Not Acceptable. If in the course of any discussions in this area the obligor agrees orally to the proposed application of funds, the CSED must still obtain a signed, written agreement to keep any part of the overcollection. If no written agreement is received, the caseworker must proceed as in step 8.

7. If obligor signs and returns Agreement within 10 days, signs and dates Agreement and places in case file; enters SEARCHS casenote for type of Agreement and date executed.

   a. For income withholding agreement entered **before SEARCHS annualization capability is in place** (see NOTE below), monitors current support account. When annualization deficit appears, sends adjustment to apply overcollection to deficit; takes action to prevent any remaining amount from being refunded, and repeats procedure in this substep each month until amount exhausted.

   b. For income withholding agreement entered **after SEARCHS annualization capability is in place** (see NOTE below), updates annualization and consent fields on SEARCHS OWI screen. Monitors accounts for first month following OWI update, and sends adjustment if necessary.

NOTE: Automated Annualization. OWI processing of the annualization consent will trigger two automatic SEARCHS functions: (1) overcollected income withholding amounts will be automatically applied to existing annualization deficits, and (2) any remaining amounts from the overcollection will be automatically held and applied to future deficits. Caseworker intervention following execution of the agreement will not be required. (SEARCHS capability in this area was not in production as of this writing.)

c. For non-income withholding agreement proceeds in (I) or (ii) (or both) below, according to reason(s) for agreement:
   (i) Applies funds to existing debt as applicable. Refunds remaining amount, or proceeds as in (ii) below.
   (ii) Monitors succeeding months' accounts until arrears accrue, and sends adjustment to apply funds as appropriate. For any remaining funds, takes action to hold or refund, depending on expectation of future delinquency. Repeats procedures in this substep (ii) until original overcollection is exhausted.

   For any separate overcollection, begins again at step 1. (Agreement to apply overcollection is specific to pay source and debt period; it does not extend to any other overcollections.) If agreement is for only partial amount of identified overcollection, immediately refunds unapproved portion, and applies remaining funds as in this substep (7c).

8. If obligor does not sign and return Agreement within 10 days, proceeds as follows:

   a. At caseworker's discretion, contacts obligor to determine whether agreement can be expected. Proceeds to step 8b or 8c depending on outcome of contact.

   b. If agreement is signed and returned, proceeds as in step 7.

   c. If agreement is not signed and returned, refunds overcollection, and enters SEARCHS casenote agreement not returned. Failure to return signed agreement is considered refusal to authorize application of funds, and overrides any presumed consent to the contrary. (Note that this is a different situation from one in which "informal consent" applies, and no agreement is ever sent; see POLICY.)

   If agreement was for income withholding collection, updates SEARCHS OWI screen if applicable (see NOTE after step 7b regarding SEARCHS capability timing).